

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

APRIL TERM, 1901.

No. 1090.

88

THE DISTRICT OF COLUMBIA, APPELLANT,

vs.

CATHERINE ROTH.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED APRIL 24, 1901.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

APRIL TERM, 1901.

No. 1090.

THE DISTRICT OF COLUMBIA, APPELLANT,

vs.

CATHERINE ROTH.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

THE DISTRICT OF COLUMBIA, Appellant, }
vs. } No. 1090.
CATHERINE ROTH.

a Supreme Court of the District of Columbia.

CATHERINE ROTH }
vs. } No. 40769. At Law.
THE DISTRICT OF COLUMBIA.

UNITED STATES OF AMERICA, } ss :
District of Columbia,

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Leave Granted to Amend Declaration.*

Filed July 12, 1899.

In the Supreme Court of the District of Columbia.

CATHARINE ROTH, Plaintiff, }
vs. } At Law. No. 40769.
THE DISTRICT OF COLUMBIA, Defendant.

It is by the court, this the 12th day of July, ordered that the plaintiff have leave to so amend her declaration in this cause as she may be advised so as to allege and charge in the several counts in the said declaration that the station-house stable referred to therein has been since the 10th day of February, 1894, and still is carelessly, improperly, and negligently maintained and kept.

E. F. BINGHAM, C. J.

I consent:

A. B. DUVALL,
Attorney, D. C.

Amended Declaration.

Filed July 12, 1899.

In the Supreme Court of the District of Columbia.

CATHERINE ROTH, Plaintiff,	} At Law. No. 40769.
vs.	
THE DISTRICT OF COLUMBIA, Defendant.	

The plaintiff, Catherine Roth, sues the defendant, The District of Columbia, a municipal corporation duly created by act of the Congress of the United States, for that the said plaintiff, Catherine Roth, before and at the time of the committing of the grievances hereinafter mentioned, in the city of Washington, in the District of Columbia, aforesaid, was and from thence hitherto hath been and still is lawfully possessed of a certain piece, parcel, or lot of ground, with the appurtenances thereto belonging, situate, lying, and being in the said city of Washington, in the said District of Columbia, known and designated on the ground plan or plat of said city as part of lot number eleven (11), in square No. 481, on Fifth street between M street and N street northwest; upon said piece or parcel of ground there then was and yet is erected and built a certain dwelling-house and outbuildings appurtenant thereto, the property of the said plaintiff, and in which said dwelling-house the said plaintiff, for a long period of time and at the time of the committing of the grievances hereinafter mentioned, hath resided and dwelt and from thence hitherto hath been and still is possessed of a certain piece or parcel of ground contiguous and near to the said ground and dwelling-house of the plaintiff, upon which said last-mentioned piece of ground

3 the said defendant upon the 10th day of February, 1894, and from thence continuously until the day of the commencement of this action, have wrongfully, unlawfully, injuriously, improperly, carelessly, and negligently kept, maintained, and continued, and caused to be so kept, maintained, and continued, and still do so keep, maintain, and continue a certain structure known and designated as a station-house stable (before that time wrongfully raised and erected by the defendant upon said last-mentioned parcel of ground), and from the day and year last aforesaid hitherto have wrongfully, injuriously, improperly, carelessly, and negligently kept and continued to use the said structure as a place for keeping horses in large and unusual numbers, and also wagons, carriages, and other vehicles of various kinds, and during the period aforesaid have wrongfully, injuriously, improperly, and negligently continued to cause large and unnecessary numbers of persons, the servants and employees of the defendant, to collect in and about the said stable, to wit, at Washington city aforesaid, and the said plaintiff avers that, by reason of the premises and of the said station-house stable so, as aforesaid, wrongfully, injuriously, improperly, and negligently

kept and continued by the said defendant, and by reason of the aforesaid large number of horses, vehicles, and men so, as aforesaid, wrongfully, injuriously, improperly, and negligently kept and continued upon and in the premises and station-house stable aforesaid by the defendant, loud, offensive, and disagreeable sounds of the kicking of horses, rattling of vehicles, objurgations and vociferations of men, and divers other loud and unseemly noises from the day and year aforesaid hitherto continually, both by day
4 and by night, proceeded from and issued out of the aforesaid stable and penetrated into and about the said premises and dwelling-house of the said plaintiff, and have thereby during all the period aforesaid prevented the said plaintiff from having sound, healthful, and refreshing sleep, and have disordered her nervous system, and have otherwise greatly injured the said plaintiff in her health, and greatly annoyed and incommoded the said plaintiff in her habitation of her said dwelling-house, to wit, at Washington city aforesaid, and also by reason of the negligent, careless, and improper manner in and by which said station-house stable was kept, managed, and maintained divers noisome, noxious, offensive, and unwholesome smells, vapors, and stench during the time aforesaid ascended from the said station-house stable and came unto and into the said premises and dwelling-house of the said plaintiff, to wit, at Washington city aforesaid, and then and there filled and impregnated the air over, through, and about the said premises and dwelling-house, so that the same thereby became and was and still is offensive, unhealthy, unwholesome, and uncomfortable; and the said plaintiff avers that by reason of the aforesaid station-house stable so, as aforesaid, wrongfully, injuriously, improperly, carelessly, and negligently kept and continued by the defendant, and by reason of all the loud, offensive, and disagreeable noises resulting from the careless, improper, and wrongful keeping, continuing, and managing of the said station-house stable, as aforesaid, and by reason of the noisome, noxious, offensive, and unwholesome smells, vapors, and stench proceeding and ascending from said station-house stable, as aforesaid, she had been made and continued sick, sore, and
5 disordered and has so remained for a long space of time, to wit, from the day and year last aforesaid hitherto, and her health has by reason of the premises been greatly and permanently injured and destroyed, to wit, at Washington city aforesaid, to her damage two thousand and five hundred (\$2,500) dollars.

Second Count.

For her further cause of action the said plaintiff, Catherine Roth, sues the defendant, The District of Columbia, a municipal corporation duly created by act of the Congress of the United States, for that the said plaintiff, Catherine Roth, before and at the time of the committing of the grievances hereinafter mentioned, was and from thence hitherto has been and still is lawfully possessed of a piece or parcel of ground, with the appurtenances thereto belonging, situate, lying,

and being in the city of Washington, District of Columbia, known and designated on the ground plan or plat of said city as part of lot No. eleven (11), in square No. 481, on 5th street between M street and N street northwest, upon which said piece or parcel of ground there then was and yet is erected and built a certain dwelling-house and outbuildings appurtenant thereto, the property of the said plaintiff, and at the time of the committing of the grievances hereinafter mentioned and for a short time thereafter a part of said dwelling-house was used by the said plaintiff as a place of business or store-room *as a* conducting her business, her said business then being that of a grocer, to wit, at Washington city aforesaid.

6 And whereas also the said defendant before and at the time of the committing of the grievances hereinafter mentioned was and from thence hitherto hath been and still is possessed of a certain piece or parcel of ground contiguous and near to the said ground and dwelling-house of the plaintiff, upon which said last-mentioned piece of ground the said defendant, upon the 10th day of February, 1894, and from thence continuously until the day of the commencement of this action, have wrongfully, unlawfully, injuriously, improperly, carelessly, and negligently kept, maintained, and continued, — to be so kept, maintained, and continued, and do still so keep, maintain, and continue a certain structure known and designated as a station-house stable (before that time wrongfully raised and erected by the said defendant upon said last-mentioned parcel of ground), and from the day and year last aforesaid hitherto have wrongfully, injuriously, improperly, carelessly, and negligently kept and continued using said structure as a place for keeping horses in large and unusual numbers, and also wagons and other vehicles of various kinds, and during the period aforesaid have wrongfully, injuriously, improperly, carelessly, and negligently continued to cause large and unnecessary numbers of persons, the servants and employees of the defendant, to collect in and about the said stable, to wit, at Washington city aforesaid.

And the said plaintiff avers that by reason of the premises and of the said station-house stable so, as aforesaid, wrongfully, injuriously, improperly, carelessly, and negligently kept and continued by the said defendant and the aforesaid large number of horses, vehicles, and men so, as aforesaid, wrongfully, injuriously, improperly, carelessly, and negligently kept and continued upon and in
7 the premises and station-house stable aforesaid by the defendant and by reason of a careless and improper management of said horses and vehicles by defendant's said employees loud, offensive, and disagreeable sounds of the kicking of horses, rattling of vehicles, objurgations and vociferations of men, and divers other loud and unseemly noises have, from the day and year aforesaid hitherto, *have* continually proceeded from and issued out of the said stable and penetrated in and about the said premises and dwelling-house of the said plaintiff, and also, by reason of an improper and negligent manner of attending to and managing said station-house stable, divers noisome, noxious, offensive, and unwholesome smells, vapors,

and stench during all the time aforesaid ascended from the said station-house stable and came unto and into the said premises and dwelling-house of the said plaintiff and filled and impregnated the air over, through, and about the same, so that the said air became and was and still is unhealthy, offensive, and uncomfortable, and also thereby divers large and injurious swarm- of flies and rats in great numbers have, during all the times aforesaid, proceeded out of and from the said station-house stable and came unto and into the said premises and dwelling-house of the said plaintiff, and particularly unto and into that part thereof so, as aforesaid, used by the said plaintiff as a store or place of business, to wit, at Washington city aforesaid; and the said plaintiff further avers that, by reason of the aforesaid large and injurious swarm- of flies and of rats, she has been unable during all the time aforesaid to keep a clean, sweet, and
8 wholesome stock of groceries in her said store and place of business, and that by reason thereof, and also by reason of the wrongful, injurious, improper, careless, and negligent keeping and continuing of said stable by the defendant, and by reason of the loud and unseemly noises and the noisome, noxious, offensive, and unwholesome smells, vapors, and stench continually proceeding and ascending from said stable, as aforesaid, her patrons and other persons have, during all the time aforesaid, been deterred and prevented from trading with her as otherwise they would have done, and her said business as a grocer has been thereby wholly destroyed, and she has been wholly deprived of her great gains and livelihood, which otherwise she would have received therefrom, to wit, at Washington city aforesaid; and the said plaintiff says that by reason of the premises and the injuries aforesaid she has been damaged in the sum of two thousand and five hundred (\$2,500) dollars.

Third Count.

For her further cause of action the plaintiff sues the defendant, a municipal corporation duly created by act of the Congress of the United States, for that the plaintiff, before and at the time of the committing of the grievances hereinafter mentioned was and from thence hitherto has been and still is lawfully possessed of a certain parcel of ground, with the appurtenances, situate in the city of Washington, in the District of Columbia, designated on the plat of said city as part of lot No. eleven (11), in square No. four hundred and eighty-one (481), on Fifth street between M street and N street northwest, upon
9 which parcel of ground there then was and yet is erected a certain dwelling-house and outbuildings, the property of the plaintiff, and in which dwelling-house the plaintiff for a long period of time before and at the time of the committing of the grievances hereinafter mentioned and from thence hitherto hath resided and still doth reside, to wit, at Washington city aforesaid, and also the defendant before and at the time of the committing of the grievances hereinafter mentioned was and from thence hitherto hath been and still is possessed of a certain parcel of ground contiguous to the

ground and dwelling-house of the plaintiff, upon which last-mentioned piece of ground the defendant upon the 10th day of February, 1894, and from thence continuously until the day of the commencement of this action, has wrongfully, unlawfully, injuriously, improperly, carelessly, and negligently kept and continued and still does keep and continue a certain structure known as a station-house stable, before that time wrongfully raised and erected by the defendant upon said last-mentioned parcel of ground, and from the day and year last aforesaid hitherto has wrongfully, injuriously, carelessly, improperly, and negligently kept and continued to use the said structure as a place for keeping horses in large and unusual numbers, and also wagons and other vehicles of various kinds, and during the period aforesaid has wrongfully, injuriously, improperly, carelessly, and negligently continued to cause and still continues to cause large and unnecessary numbers of persons, the employees of the defendant, to collect in and about the said stable for the performance of such duties as might be required

10 of them, to wit, at Washington city aforesaid; and the plaintiff avers that by reason of the premises of the station-house stable so as aforesaid wrongfully, injuriously, improperly, carelessly, and negligently kept and continued by the defendant and by reason of the large number of horses, vehicles, and men so as aforesaid wrongfully, injuriously, improperly, carelessly, and negligently kept and continued in the stable aforesaid by the defendant, loud and offensive sounds of the kicking of horses, rattling of vehicles, ringing of gongs, objurgations and vociferations of men, and divers other loud and unseemly noises have, from the day and year aforesaid, hitherto continually, both by day and by night, proceeded out of the said stable and penetrated in and about the said premises and dwelling-house of the plaintiff, and also thereby was noxious and unwholesome vapors and stench during all the time aforesaid ascended from said stable and came unto and into the premises and dwelling-house of the plaintiff and impregnated the air through and about the same so that said air became and was and still is unhealthy and offensive; and also thereby divers large and injurious swarm- of flies and rats during all the time aforesaid proceeded out of said stable and came unto and into the dwelling-house of the plaintiff, to wit, at Washington city aforesaid; and the plaintiff further avers that by reason of the wrongful, injurious, improper, careless, and negligent keeping, continuing, maintaining, and managing of said stable by the defendant and by reason of the loud and unseemly noises, the noxious and unwholesome stench and vapors, and the large and injurious swarm- of flies and rats continually proceeding and ascending from said stable, as aforesaid, the value of the lot and dwelling-

11 house of the plaintiff herein described has been and is greatly depreciated, and the said dwelling-house was and is rendered unsuitable and valueless as a place of residence, and the rental value thereof has been *unwholly* destroyed, and the plaintiff has thereby been prevented from having so beneficial a use and occupation of

her said dwelling-house as she otherwise might and would have had, to wit, at Washington city aforesaid, to the damage of the plaintiff in the sum of three thousand (\$3,000) dollars.

And the plaintiff claims that by reason of the three causes of action set forth in the first, second, and third counts of this declaration she has been damaged in the sum of eight thousand (\$8,000) dollars, and she claims the sum of eight thousand (\$8,000) dollars, besides the costs of this suit.

DOUGLASS & DOUGLASS.
LECKIE & FULTON.

Notice to Plead.

The defendant is to plead hereto on or before the 20th day, exclusive of Sundays and legal holidays, occurring after the day of the service hereof; otherwise judgment.

DOUGLASS & DOUGLASS.
LECKIE & FULTON.

12

Defendant's Plea, &c.

Filed July 18, 1899.

In the Supreme Court of the District of Columbia.

CATHERINE ROTH, Plaintiff,	}	At Law. No. 40769.
vs.		
THE DISTRICT OF COLUMBIA, Defendant.		

The defendant for plea to each and every count of the plaintiff's amended declaration in the above-entitled cause says it is not guilty in manner and form as alleged.

A. B. DUVALL,
C. A. BRANDENBURG,
Attorneys for Defendant.

Joinder of Issue.

Filed July 21, 1899.

In the Supreme Court of the District of Columbia.

CATHERINE ROTH, Plaintiff,	}	At Law. No. 40769.
vs.		
THE DISTRICT OF COLUMBIA, Defendant.		

The plaintiff joins issue on the defendant's plea to the amended declaration filed in the above-entitled cause.

DOUGLASS & DOUGLASS,
LECKIE & FULTON,
Attorneys for Plaintiff.

13

Memoranda.

November 6, '99.—Verdict for defendant.

November 11.—Judgment on verdict.

November 16.—Appeal by plaintiff.

April 20.—Mandate from Court of Appeals reversing judgment and remanding cause for further proceedings.

* * * * *

May 1, 1900.—Judgment vacated and new trial granted.

November 21.—Verdict for plaintiff for \$2,300.

December 7.—Motion for new trial continued to Dec. 21, 1900.

December 21.—Motion for new trial continued to Jan'y 4, 1900.

December 31.—October term, 1900, prolonged 30 days to settle exceptions.

14

Supreme Court of the District of Columbia.

FRIDAY, *January 18, 1901.*

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

* * * * *

CATHERINE ROTH, Plaintiff,

vs.

THE DISTRICT OF COLUMBIA, Defendant.

} At Law. No. 40769.

Upon consideration of the defendant's motion for a new trial, it is considered that said motion be, and the same hereby is, overruled and judgment on verdict ordered. Therefore it is considered that the plaintiff recover against the defendant two thousand three hundred dollars (\$2,300.00) for her damages as aforesaid assessed, together with her costs of suit, to be taxed by the clerk, and have execution thereof.

Order for Appeal.

Filed January 28, 1901.

In the Supreme Court of the District of Columbia.

CATHARINE ROTH

vs.

DISTRICT OF COLUMBIA.

} At Law. No. 40769.

The clerk will please enter an appeal to the Court of Appeals, D. C., from the judgment in the above-entitled cause and issue citation to the plaintiff, Catharine Roth.

A. B. DUVALL,
Attorney for Defendant.

15 In the Supreme Court of the District of Columbia.

CATHERINE ROTH	}	At Law. No. 40769.
vs.		
THE DISTRICT OF COLUMBIA.		

The President of the United States to Catherine Roth, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal filed in the clerk's office of the supreme court of the District of Columbia on the 28th day of January, 1901, wherein The District of Columbia is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.	Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 28th day of January, in the year of our Lord one thousand nine hundred and one (1901).
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J. R. YOUNG, *Clerk*,
By W. R. WILLIAMS, *Ass't Clerk*.

Service of the above citation accepted this — day of —, 1901.

Attorney for Appellee.

[Endorsed:] No. 40769. Law. Catherine Roth vs. The District of Columbia. Citation. Issued Jan. 28th, 1901. Served copy of the within citation on within-named appellee, Catherine Roth, Jan'y 28th, 1901. Aulick Palmer, marshal. A. B. Duvall & C. A. Brandenburg, attorneys for appellant.

16 *Memorandum.*

January 30, 1901.—Bill of exceptions presented to court.

17 Supreme Court of the District of Columbia, April 1, 1901.

CATHERINE ROTH, Plaintiff,	}	At Law. No. 40769.
vs.		
THE DISTRICT OF COLUMBIA, Defendant.		

Now comes here again the defendant, by its attorneys, and prays the court to sign, seal, and make part of the record, now for then, its bill of exceptions taken during the trial hereof and heretofore submitted to the court, which is accordingly done.

Bill of Exceptions.

Filed April 1, 1901.

In the Supreme Court of the District of Columbia.

CATHARINE ROTH, Plaintiff,	} At Law. No. 40769.
vs.	
THE DISTRICT OF COLUMBIA, Defendant.	

Be it remembered that — the trial of this cause on the 12th day of November, A. D. 1900, before Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, and a jury regularly impaneled to try the issues joined between the plaintiff and the defendant herein, the plaintiff, to maintain and prove the issues on her part joined, gave evidence to prove that she was and had been for a number of years the owner of the land mentioned in her declaration, and of the frame dwelling-house thereon, known as No. 1228 Fifth street northwest, in the city of Washington, District of Columbia, and that the defendant, being the owner of the lot of ground adjoining the same, erected thereon during the years 1892 and 1893 a building known as an "ambulance stable," the same being completed in the spring of 1893; that the said ambulance stable is within three feet of the plaintiff's said house; that there have been kept in said stable continuously since the year 1894 from eight to ten horses, together with ambulance and patrol wagons, and a portion of the time a wagon used for the purpose of conveying dead bodies to the morgue, etc.; that the manure which collected in the stalls of said ambulance stable and in the patrol stable (which

19 said stable immediately adjoins that of the said ambulance stable) was deposited in a so-called "manure pit" on a vacant portion of the defendant's said lot which immediately adjoins that of the plaintiff's premises and in the rear of said ambulance stable and against a brick wall about six feet high, which separates the District premises from those of the plaintiff, and in a corner of the yard in the rear of plaintiff's said house, immediately opposite the said manure pit, is a small shed, the side of which runs up five feet, more or less, above the said brick wall, and that before the erection and occupation of the said ambulance stable the plaintiff was not annoyed by offensive odors, rats, or flies, but that after the erection and occupation of the said ambulance stable it was so carelessly and negligently managed that the plaintiff was annoyed, inconvenienced, and made sick by the bad and unwholesome odors which emanated from the said ambulance stable and manure pit, which said odors were always bad, but at times much worse and more offensive than at others; that these said odors permeated the entire house of the plaintiff, including her sleeping apartments and the front room, where she conducted a small general merchandise business which was profitable and from the revenues of which she derived her support;

that the odors from the aforesaid ambulance stable and manure pit permeated all of the goods in her said store, thereby seriously affecting the salability of all of her said goods in said store, including edibles, dry goods, and notions; (that the aforesaid ambulance stable was carelessly conducted;) that disinfectants were seldom, if ever, used in the stalls or in the manure pit; that no provision- were made by the defendant for the

20 removal of the manure stored in the so-called manure pit, and that frequently the said manure was allowed to collect and remain there for an unreasonably long time, at times as long as two or three weeks, the same being removed at irregular intervals, the employés in charge being wholly dependent upon private individuals who might happen to want it, at which time the said employés in charge would sell it for private gain, dividing whatever money they received for the same among themselves; that in addition to storing manure in the so-called manure pit the employés in and about the said ambulance stable and patrol stable would throw all kinds of refuse and vegetable matter, such as watermelon rind, cantaloupe rind, banana peelings, and the like, on the said manure pit, and at times dead rats would be thrown on the said pit, and at one time a dead cat was thrown on said pit; that rats congregated in and upon defendant's premises (ambulance stable) and came in and upon the plaintiff's premises, undermining the plaintiff's said kitchen and burrowing holes in many parts of her said house—in fact in every room of her said house; that said rats destroyed clothing, meats, and vegetables wherever the same could be found in any part of said house; that they polluted and destroyed plaintiff's groceries, dry goods, and notions in her said store, making the same unsalable and unfit for use; that flies congregated in and about the aforesaid manure pit, and that they came upon the plaintiff's premises and infested her said house, and particularly her kitchen and store-room, thereby polluting and destroying goods in her store and edibles in her kitchen; that kicking horses were kept in the said ambulance stable, and

21 that the same would prance and kick at all hours of the night, thereby disturbing the plaintiff's rest, and on account thereof and together with the presence of the odors and the rats made it impossible for the plaintiff to sleep at night; that at times the said horses would be allowed to run loose in said stable during the night and prance up and down in the wooden stalls and stable flooring, thereby making a great noise and disturbing the plaintiff's rest; that by reason of the aforesaid noisome odors emanating from the defendant's stable and manure pit aforesaid and by reason of the bad odors caused by the presence of the rats—which said rats came from the aforesaid ambulance stable and infested the plaintiff's house, polluted and destroyed plaintiff's stock of goods to such an extent that her business fell off greatly from time to time until finally she was compelled to abandon the same entirely—and by reason of the aforesaid noises and odors and the presence of rats the plaintiff could not rent her said premises as she had done prior

to the erection and occupation of the aforesaid ambulance stable, thereby depriving her of as beneficial a use of her said premises as she otherwise would have had, and by reason of the aforesaid noisome odors, the presence of rats, and the noises caused during the night by horses being allowed to run loose in the ambulance stable, and by the kicking of a certain horse or horses, thereby making great noise, the plaintiff's rest was destroyed both by day and night; that plaintiff's health was permanently impaired and destroyed, and that plaintiff is now a complete physical wreck, notwithstanding that she was a stout, strong woman prior to 1894;

22 that before the tenth day of February, 1894, the plaintiff's house was in good condition, and that she kept the rooms on the second floor generally rented at a fair rental, and that no great inconvenience or annoyance was experienced prior to the tenth day of February, 1894, but that since that time and during the period covered by the suit plaintiff was unable to rent the portion of her house that she had been theretofore accustomed to rent, and that prior to the erection and completion of the said stable the plaintiff suffered no injury from rats, odors, and flies; that during the year 1893 the injuries from the causes stated were very slight, but that commencing with 1894 and running throughout the years 1895 and 1896 the nuisance-complained of in the particulars named were very bad; that before the first of 1894 the plaintiff had a prosperous store business, but that on account of the conditions produced by the manner in which the stable was conducted that her business ran down to practically nothing, and that in the latter part of the year 1896 she was compelled to abandon it; that before the erection of the stable the plaintiff was a stout, strong, and healthy woman, and that some time in the year 1893 her health became impaired, and that her health continued to grow worse, especially during the years 1894, 1895, and 1896, until she became practically a physical and mental wreck; that the conditions and things complained of and the injuries that resulted therefrom existed and were suffered by the plaintiff, as hereinbefore recited, between the tenth day of February, 1894, and the tenth day of February, 1897.

23 Thereupon Mrs. CATHERINE ROTH, the plaintiff, called in her own behalf, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. DOUGLASS:

Q. Where do you live? A. 1228 5th street.

Q. You are the plaintiff in this suit? A. Yes, sir.

Q. How old are you? A. I am nearly seventy.

Q. Where were you born? A. In Germany.

Q. How long have you lived at 1228 5th street? A. My husband has been dead 28 years, and he left me a little life-insurance money. With that I bought this place.

Q. And you have been living there ever since? A. Yes; I have been living there ever since.

Q. When did you buy that place? A. I bought it about a half year or a year after my husband died.

Q. And you say your husband died about 29 years ago? A. About 29 or 28 years ago, I guess.

Q. Do you remember when the ambulance stable was built on Fifth street? A. Yes, sir.

Q. When was it? A. They commenced that in October; October twenty-two, eighteen—how must I say it?

24 Q. What year did they commence it; 1891, 1892, 1893, 1894, or when? A. It was in 1892.

Q. When did they finish it? A. They finished it in the spring, about March.

Q. The spring of what year? A. 1893.

Q. How close is that stable to your house? A. They left me a little side alley. How many feet it is I cannot tell you—about three and a half or four feet.

Q. The District stable is right on the line? A. Right on my side; yes.

Q. Does that hallway of yours come right down to the District stable line? A. Yes; right down.

Q. Have you anything in the back part of your lot? A. I have a wood-shed.

Q. Is the water-closet in the wood-shed? A. And the water-closet is in the wood-shed; yes.

Q. How many rooms on the first floor of that house? A. Three rooms.

Q. How many on the second floor? A. Three rooms.

Q. It is a six-room house? A. Yes.

Q. Have you suffered since that stable was completed in March or April, 1893, any inconvenience or injury from anything? A. Oh, yes; it could not be helped. I had to worry about everything, you know.

25 Q. Tell me this: Were there any odors from that stable? A. Yes; not so much in 1893.

Q. That is the first year it was there? A. That was the first year—1893.

Q. How were the odors in 1894, 1895, 1896, and 1897? A. It got worser and worser and worser.

Q. Were they better or worse in the winter time? A. In the winter time it was not so bad like the summer—certainly not. In summer time the bad smelling was noticed in the yard. When I sat out on the flower garden the smelling was very bad.

Q. Was the flower garden in the front or back of your house? A. I had flowers in the back and a good many flowers in the front, and grapes and all that.

Q. You say you could notice these odors in the back yard and front yard both? A. Oh, yes, yes.

Q. Were they noticeable in the kitchen or in your bed-room? A. Yes; all through the house.

Q. Where was your bed-room when this stable was first built?

A. Upstairs.

Q. Have you ever had your bed-room downstairs? A. Yes, sir.

Q. When? A. I have it downstairs now, and nearly all the time downstairs.

26 Q. When did you move upstairs? Was it before or after they completed the stable? A. The stable was completed one summer when I put it downstairs because the rooms were not rented, and I thought the smelling was not so bad upstairs.

Q. Did you move your bedroom upstairs before or after the stable was completed? A. After.

Q. So before the stable was built your bed-room was downstairs? A. Downstairs.

Q. What room did you occupy? A. The middle room.

Q. And the back room was what? A. The kitchen.

Q. And the front room was what? A. The store.

Q. Could you smell these bad smells or stanches in the upstairs as well as the downstairs in your house? A. Not quite as well; only it was bad upstairs, too.

Q. Not as bad as downstairs? A. No, because the rats was under the ceiling, and died under the ceiling, of course.

Q. Do you know where the manure pile of the District stable was kept? A. Yes; right by the water-closet next to my wood-shed.

Q. Did you ever notice the manure piles there during those years 1894, 1895, 1896, and 1897, and along there? A. Yes; I did. I saw the manure piles through the hole.

27 Q. Did you notice how high it was? A. Up on the brick wall, up on top, I had put some boards on it, and through those boards the rats made holes, and there I could see the manure.

Q. I want to know how high you have seen that manure piled. A. I don't know exactly.

Q. With reference to your wood-shed? A. It was as high as the brick wall, and higher, up to the boards.

Q. Do you recollect that roof on the wood-shed? You remember that, do you not? A. Yes; I remember that.

Q. Which way does that roof slope? Does it slope towards your back yard or the other way? A. The roof comes in my yard.

Q. Slopes that way? A. Yes, sir.

Q. Did you ever see any manure on top of the wood-shed? A. Yes; the manure came through the holes into the wood-shed.

Q. Did you ever see any on the top of the wood-shed? A. I don't look. I only saw the manure through the boards. It was as high as the boards.

Q. What condition did you keep your house in and what condition was it in before this stable was completed, in the spring of 1893? What condition did you keep your house in? A. I always was a clean woman; I keep everything clean.

28 Q. Did you have any rats in there before the stable was completed? A. No; I could keep everything—

Q. I want you to be positive. Did you have any rats there before that stable was completed in the spring of 1893? A. No, sir.

Q. Have you had any since? A. Yes, sir; they are plentiful.

Q. Without going too much into detail, tell the jury what the rats have done since that stable was built there. A. The rats done me a great deal of harm in the store.

Q. First tell about the house, we will come to the store after a while. A. Well, they ate everything up in the kitchen. I had a closet. My husband made a present to me of that closet, and that closet is all eat up. No doors can be used. The bottom is all out, and I cannot keep nothing noway. I ain't got nothing but my washstand. In the washstand I keep my knives and a couple of saucers and what I need every day. Back in the kitchen the rats have knocked everything in pieces, everything—my whole kitchen. Everything in my kitchen was shining, but the rats spoiled everything.

Q. Are there any rat-holes anywhere in the kitchen? A. Everywhere; the whole kitchen is eaten up.

Q. Are there any rat-holes round about the washboarding? A. Everything is eat up. I try to poison them. If I don't poison them they will kill me.

29 Q. Are there any rat-holes in your own bed-room, where you were sleeping before— A. Yes; right on the side of my bed where I sleep. I put a pile of bricks there. They ran on my bed and scared me to death. When I jumped out of bed they run on my feet. I hollered. I was always alone in the house. They came out the chimney and messed me, messed everything up, even my matting, and made holes in the door. I locked them up one time because I could not sleep. Then I shut the door and in the front room and I locked the rats in, and the rats made holes in the matting and made a hole in the door, so they could go through, and the next night they came back again.

Q. Are there any rats upstairs? A. Yes. The lady was hollering the other night. She got a little boy six months old. She said, "Mrs. Roth, I think"—

Q. We need not go into that. I just wanted to know if the rats got in there. A. Yes; and the rats got in the middle room, where I laid the bricks.

Q. Did you have any rats in the front room? A. Yes; they were just as much in the front room, although there is not so many holes in the front room.

Q. Did you make any effort to prevent the rats from getting into your house? A. I tried everything. I am a proud woman my whole lifetime. I tried everything. I poisoned them. The young ones were hollering. I poisoned sometimes three or four in one night, and the young ones were hollering under the kitchen floor and in the closet, and I felt awful sorry.

30 Q. Did you ever try to get anybody to do any work to prevent the rats from bothering you so? A. Yes; my son shut the holes up, and Mr. Ruppert shut the holes up.

Q. What happened after you shut the holes up? A. They came out of two or three other holes. They made other holes.

Q. Were you troubled with flies to any great extent before the stable was built? A. Before the stable was there I kept my place always dark. I was not troubled much with them.

Q. Were you troubled with them after the stable went there? A. Yes, sir.

Q. Did you notice what sort of flies they were? A. The flies I had in the store were regular house flies, only them what were in the wood-shed, they was awful; they was great big flies there.

Q. Did you notice what color they were? A. Well, it was a kind of great big flies, and black——

Q. You do not know what kind of fly it was called? A. No.

Q. It was not a regular house fly? A. No; it was not a house fly.

Q. Did you notice any of those flies about the wood-shed out there? A. No; there was no house flies in the wood-shed. They were regular stable flies, I guess.

Q. Where were they? A. In the wood-shed.

31 Q. Regular stable flies? A. Yes, sir.

Q. Was that the sort of flies you were troubled with in the house after the stable was erected? A. Yes; a great deal.

Q. What business were you in before this stable was built there? A. I had no business.

Q. How did you make your living before the stable was erected? A. I don't know; I had an income from the rent; I had my rent regularly.

Q. I do not think you understand. What did you do for a living before this stable was built—how did you make your living? A. That is what I say; I lived off the rent, what I got.

Q. The rent you got from where? A. From the rooms upstairs.

Q. Did you do any work? A. No; I didn't do any work.

Q. Did you have any sort of business in that house at all before that stable was built? A. No.

Q. Did you have a store? A. Yes; I had a store.

Q. I am asking you before that stable was put there, I want to know what sort of business you had there. A. I had a store; I did not understand.

Q. What kind of stock did you keep in that store? A. I kept everything what is useful in a house, what everybody needs.

32 Q. Did you keep groceries? A. Groceries. I bought sugar by the barrel, two or three boxes; special, different kinds; I had a great deal of variety.

Q. Did you keep any notions or dry goods? A. All kinds of notions, even for the colored people.

Q. Tell me what you made clear out of that store before that stable was put there. A. I made sometimes \$30, sometimes \$35, sometimes \$45 clear.

Q. What do you mean by clear? A. After my debts were paid. I had to be there in the night-time. I was not well and I could not stand it.

Q. Are you running that store now? A. No.

Q. When did you quit it? A. I guess it was about 1895, before 1895 and 1896, or something like that. I didn't count exactly that.

Q. You quit it, then, about 1895 or 1896? A. Yes.

Q. Did you run it in 1894? A. Yes; I run it in 1894.

Q. Did you run it part of 1895? A. Yes; I tried to keep on, only I didn't do nothing.

Q. Did you make any money there in 1894? A. Well, I made so I could come straight.

Q. Did you clear anything that year; did you make anything in 1894 above expenses? A. No.

33 Q. How did you do in 1895? A. In 1895 I broke down and broke down and everything went down.

Q. Did you lose or come out even? A. I lost more than I made.

Q. In 1895? A. Yes.

Q. And then you quit? A. Then I quit because of the bad smelling and the rats, which disturbed me more, and till I took sick.

Q. Now, tell me this: Did you have any odors, either from the stable or from the rats in the store itself, during 1894 and 1895? A. That is the reason I had good customers. I sold fifty loaves of bread.

Q. I am not asking you about that. I am asking you whether you had any odors from the stable or from the rats in the store itself. A. Everything smelled bad.

Q. You mean everything in the store? A. Yes; everything in the store. When the people opened the door—well, they said, "What a smell you have got in here, Mrs. Roth." So finally the people was afraid to buy anything from me.

Q. You say everything smelled bad. Did it have the smell of the stable or the smell of the rats, or what sort of a smell? A. Both of them.

Q. Was that smell confined to the groceries or did it also include the dry goods and notions? A. Everything; it stinked in everything.

34 Q. Did you make any effort to keep that store clean during that time? A. I don't think somebody could keep the place clean.

Q. Did you try to keep the place clean? A. Yes; I was a clean woman my whole lifetime.

Q. Did you keep that store clean before the stable came there? A. Certainly I did.

Q. Did you have any rats there or were you troubled with rats before that stable was put there? A. No.

Q. Did they eat up or destroy anything in the store after the stable was completed, say in 1894 and 1895? A. Yes.

Q. Tell the jury something about the way they would destroy the things in your store? A. They made holes in the show-case and they got over all the things.

Q. How would they make holes in the show-case? A. They made holes in the bottom. The bottom was a sticking out from the counter, and one morning there was a hole in it and everything was disturbed, and the bread—when I went out Saturday evening to the market—I had Havenner's bread and Schneider's and all the rest, and when I came home from the market the fresh bread was lying on the floor and holes eat in it.

Q. Did they eat anything except bread? A. Everything they could get hold of. You know they like sweet things, too.

Q. Did you keep rice there? A. Rice?

35 Q. Did you keep soap? A. Also soap and eggs, and five or six pounds of butter, and everything I keep; and I keep cigars—I keep three or four *times*—cigarettes, and I keep tobacco of all kinds. I keep everything—everything.

Q. You say you closed that store about 1895 or 1896? A. Yes, sir.

Q. Did you have any way of making a living for yourself except as you stated? A. No; the District made a poor woman of me. I had nothing more to live off of; I was poor.

Q. Did you pay your building & loan dues before this stable was built? A. Yes; I owed nobody one penny. I had my bills right away; I owed nobody—never.

Q. Were you able to rent your rooms before this stable was built? A. Yes; I can prove I had people in six years and three years. I don't know whether one gentleman on the jury know—

Q. Let us make it as short as you can, so as not to tax anybody's patience. Were you able to rent it after the stable was put there? A. No; I could not rent them then. If I could rent them I got bad people in and could not get no rent and had to put them out, and could not rent them no more.

Q. Tell us, Mrs. Roth, how was your health before this stable was put there? A. I was splendid—a big, stout woman—and could work in my store, and now it is too much for me.

36 Q. Were you ever sick before that time? A. Certainly, just like all the ladies complain once in a while.

Q. But no serious illness? A. No sickness what keep down. On day sometimes sick.

Q. Some one was asked yesterday, I think it was Dr. English, if you did not receive a blow on your head. Do you recollect how long that was before that stable was put up? A. I had Dr. Prentiss then. I had Dr. Prentiss for a long while. He is a professor, and he attended to me then, besides Dr. English.

Q. Do you recollect what year that was? A. That was just that time when the stable got completed. The colored men were just working there, putting concrete on it and stones on it.

Q. The question I asked was how long before the stable was built did you have that blow on your head? A. No; the same time. They finished the stable at the same time.

Q. Dr. English testified yesterday that this wound on your head was in 1889. Do you recollect whether that is true or not? A. What?

Q. I am trying to locate that year when you had this blow on your head. Dr. English testified that you had this blow in 1889. I want to know whether that is correct. A. No; that is not correct. I can show it now. They were finishing the stable, and some kind of men worked out there and finished the pavement the first thing.

37 Q. Did you get over that blow? A. Yes; I got over that. That should not be brought out at all.

Q. Were you perfectly well of that before the stable was completed? A. Yes; very well; that is what I say, just like sometimes a headache.

Q. I mean well of that injury on your head, were you well of that? A. Yes; I was well, all right.

Q. How has your health been since 1893, since the spring of 1893, when this building was completed? A. I took sick right away. If I could keep up it was no- so bad. Then in 1893 I got worse. It could not be helped.

Q. How have you been affected, what has been your trouble, since the stables were put there? A. I am always sick of the smelling, sick at my stomach, sick headache, my nerves weak, cannot eat.

Q. And what about your ability to sleep? A. I could not sleep in the night.

Q. What was the matter that you could not sleep? A. Well, I could not sleep because the horses ran around in the stable, knocked on the wall, right on the side of my bed, and the rats run underneath the floor the whole night.

Q. Did the smells affect you too? A. It could not be helped, the smells certainly was there, and when the weather was bad it was so I could not get out of my bed in the morning, so sick and so broke down.

38 Q. What about keeping your windows up in the spring and summer? A. Well, if I shut the window I smothered nearly, and if I opened the window then the smell would come in and I could not get it out of the house any more this morning.

Q. You need not say anything about this morning. How is your health now, and how has it been since 1894 and 1896? A. I feel awful bad.

Q. Have you had any good health since this stable was put there? A. No; my life is no good to me; I do not care if I die tomorrow.

Q. Who was your physician in 1894, 1895, and 1896? A. I had Dr. Prentiss and Dr. English.

Q. Is Dr. Prentiss living or dead? A. He died about two years ago.

Cross-examination.

By Mr. DUVALL:

Q. You have appeared as a witness in your claim against the District how many time-, in how many courts? A. Well, it was one time—I don't know.

Q. Before Judge Cole? A. Judge Cole.

Q. In criminal-court room? A. Yes.

Q. That is once. A. And one time it was before Judge Bradley.

Q. You remember the trial before Judge Cole very well, do you not? A. Oh, yes.

39 Q. Did not Dr. English testify there? A. Yes.

Q. You are sure he did? A. Yes, I guess he was there. I am sure of it. (After a pause:) I am not sure. I know he was there by Judge Bradley. I don't know if he was there by Justice Cole. I cannot tell you that.

Q. Dr. Prentiss was not there before Judge Cole? A. No.

Q. But Dr. English was? A. Well, Judge Cole—I cannot tell sure. It was there, I guess, before Judge Cole. He was there one time, I know, and he was there two times, I think.

Q. And he testified before Judge Cole? I only want your best recollection. A. Yes; well, I cannot say. He was on one court. I think it was on Judge Bradley's court.

Q. He was before Judge Bradley, but I want to know whether you recall he was before Judge Cole. A. I cannot tell.

Q. You testified there before Judge Cole? A. Yes. I could not testify much. I gave out right away.

Q. But you testified there about the same that you have testified here, did you not? A. Yes, sir.

Q. The same statement about your trouble and about the rats? A. Yes.

Q. The same statement about the flies? A. Yes.

40 Q. And the same statements about the odors? A. Yes.

Q. And the same statements about the injury to your stock of goods? A. Yes.

Q. Just as you have testified here? A. Yes.

Q. Mrs. Klamp also testified before Judge Cole? A. Yes.

Q. You know the lady I am talking about? A. Yes.

Q. What is her name? A. Mrs. Klamp.

Q. And she testified in the trial before Judge Cole? A. No; I do not think so; I don't know.

Q. Do you not remember that? A. I cannot remember that; I guess so; I am not sure. I know she was there by Judge Bradley. I cannot think; it may come to my memory after while. No; I don't think she was there. I had some other ladies with me.

Q. I was asking you about this lady. You do not remember? A. No.

Q. When the District erected the ambulance stable the contractor interfered with your fence and your yard? A. Yes; so he did.

Q. He tore down your fence and pulled up your yard? A. Yes.

Q. And you were very much exasperated about it? A. So I was.

Q. You considered that you had been very much injured? 41 A. Yes.

Q. And you sued him, did you not? A. Yes.

Q. And you sued the District for it? A. Yes. First I sued the contractor, and then we did not come out right at that trial. I can-

not say everything and make you understand. Then that esquire who said——

Q. I do not care about the details. You sued the contractor and did not come out right on that, and then you sued the District? A. Yes.

Q. And that is the trial I am asking you about before Judge Cole? A. Yes.

Q. You have always insisted that the District injured you by putting that stable there? A. Always.

Q. It has been a continuous source of complaint with you? A. Always.

Q. And you were very much worked up about that? A. Nearly crazy. I am losing my mind, I often think. Then I pray to God——

Q. You were made very nervous? A. Very nervous.

Q. It caused you to give up your business? A. I could not attend no more to business, could not keep on.

Q. Because of this nervous condition, brought about by
42 locating that stable there, it upset you so you had to give up your business? A. Yes. I could not make anything any more; it was not worth while.

Q. How long had Doctor Prentiss attended you before the ambulance stable was completed? A. Well, he attended me a couple of years.

Q. I am talking about before. How long before that had Doctor English attended you? A. He did not attend me before—not before the stable was built.

Q. Did not you go to see him about your ailments before that? A. No; I had no ailings then. I have sometimes felt a little bad, but I didn't need no doctor then.

Q. Doctor English, then, is mistaken when he says he attended you before 1892? A. I cannot remember. He might have a couple of times. He often came in the store. He ate sometimes in the store.

Q. Mrs. Roth, you heard Dr. English's testimony yesterday, did you not? A. I cannot remember now. I cannot understand everything, you know.

Q. You say Doctor English first attended you when? A. He attended me the first time, I think, when I got that knock in the head.

Q. That was the first time he ever attended you? A. I think so. He was the nearest, you know; right at the station-house.

Q. What did Doctor Prentiss treat you for? A. Doctor
43 Prentiss treated me for the same. I called Dr. Prentiss when Doctor English was here. I had him a couple of years before, sometime-; you know when I say I felt bad like all the women, only it was not a bad sickness; it was only my sick stomach or——

Q. He treated you for stomach trouble? A. Yes, stomach trouble.

Q. Did not Dr. English treat you for stomach trouble before 1893? A. Yes.

Q. Before this time when the man hit you on the head, had not Doctor English treated you for stomach trouble? A. No; not that I know.

Q. But Doctor Prentiss had? A. Doctor Prentiss, I had to call him a couple of times, yes.

Q. When was the first time, about how long before the stable was put there, that you called in Doctor Prentiss for your stomach trouble? A. Well, it was a couple of years before.

Q. Had you treated yourself for stomach trouble before that? A. If I felt bad most times I treated myself like everybody.

Q. Before you called in Doctor Prentiss you had treated yourself for stomach trouble? A. Yes.

Q. How long before that had you been treating yourself for stomach trouble? A. I cannot tell that. You know many women, many ladies, get sick once in a while.

Q. If you cannot give me the time, that is all I want to know.

44 A. I cannot tell the time. I never knew I had to answer that. That is the reason I did not put down the time.

Q. Was this stomach trouble dyspepsia? A. It was a kind of dyspepsia, yes; that is all.

Q. Nausea? A. No; it was all dyspepsia. I could not digest nothing for a while, only I got all right——

Q. I ask you this because you are getting along in years, and I suppose you will not object to answering it. Do you have false teeth? A. Yes; I have now.

Q. Did not Doctor English advise you to get false teeth? Yes; other than those I got in there.

Q. Because your dyspepsia was caused by the failure to chew up your food properly? A. Yes.

Q. When was that, do you know? A. That was, I guess, three or four or five years before I had the store—or six years, I cannot tell.

Q. Three, four, five, or six years before you had this blow Doctor English advised you to get false teeth? A. No; it was later I had the false teeth, and he advised me to get different teeth, with silver or gold plate. He told me that plate I had in my mouth would poison me; that it was no good, and it was not, and I had to get another set.

Q. When was that that you got the other set? A. Well, that was later; about 1894 or something like that. I had a set a long while before; that is what I said, and Doctor English asked me to get another set.

45 Q. I want to know about when that was, if you can tell me. A. I cannot tell that.

Q. Do you think that was as early as 1893? A. Yes; it was about 1893 or 1894; something like that.

Q. How did the dyspepsia affect you; how did you feel from the effects of the dyspepsia? A. I felt that I could not digest nothing; it laid everything there and didn't go down.

Q. Did your heart beat hard? A. Yes.

Q. And your heart burned? A. Yes; it laid there; did not go down; and then I got something and I got better right away.

Q. But when you had this dyspepsia and this heavy feeling and the heartburn it interfered with your sleep, did it not? A. It came from—I cannot tell that impression; I don't know which.

Q. I do not know that you understand my question. I want to know if this dyspepsia and heartburn and heavy feeling stopped your sleep, interfered with your sleep? A. Yes; certainly.

Q. That used to keep you from sleeping? A. Keeps me from sleep. Well, that was all before the stable was there.

Q. That was before the stable was built? A. Yes.

Q. How long before the stable was built was that? A. 46 About a year or two; only that is what I say, I got all right; I took medicine a couple of weeks and that was all over with.

Q. And that is what these doctors were treating you for all the time, and what you were treating yourself for? A. Yes.

Q. Were there any rat-holes in your house before 1894? A. No.

Q. The District stable was put up there, you know, in 1893? A. Yes.

Q. There were no rat-holes there in 1893, immediately after the District stable was put up? A. No. There was in the wood-shed; only I had nothing in the house then; I couldn't see none until '94 or '95 or '96.

Q. What I want to know is whether there were any rats in your house before 1894. A. Well, yes; certainly; there was some in '94.

Q. They were there in '93? A. Yes; they came on, only they were not so plentiful.

Q. The rats invaded your house in 1893? A. Yes.

Q. I am talking about the house itself, not about the outbuildings. In 1893 the rats invaded your house? A. Yes.

Q. Did they cut up the washboarding in the kitchen in 1893? A. Yes; they commenced.

Q. Did they cut up this washstand in the kitchen in 1893? A. The closet? It commenced in 1893 and '94 and '95.

47 Q. The question was, did they commence in 1893—did the rats do any damage in your bed-room in 1893? A. No; it was not done then; later, in 1894 and 1895, it commenced. There was nothing behind my bed until a couple of years—a year or two afterwards.

Q. Did the rats invade your store in 1893? A. Yes; it commenced; it was not so bad then.

Q. They were in the store and in the stock in 1893? A. Yes.

Q. Did they destroy any bread in 1893? A. No. The rats were not so plentiful. There were some of them now and then. They commenced—that is what I say—in 1895 and 1896.

Q. I understand that. You have told me that three or four times, and I remember that. When was it that you called in Mr. Behrend and showed him the skirt that the rats had gotten into the washboarding? A. That was done in Judge Cole's court, only they ate a great deal more up since.

Q. I ask you when that was—what year was that? A. I cannot tell that; it must be between—it must be about 1895; it was between '95 and '96.

Q. Was not that testified to in the trial before Judge Cole? A. Yes.

Q. You testified to it? A. Yes.

Q. And Mr. Behrend did? A. Yes, I testified to it—only that they done a great deal more since. They ate holes in the bureau——

Q. Was that the same skirt you showed to Mrs. Klamp?
48 A. Yes.

Q. Did Mrs. Klamp pull it out of the hole? A. Yes, and some boys pulled it out of the holes. I don't know it was in the hole. I was afraid to open that closet; I was afraid that the rats would jump into my face; and then one time some boys from the neighborhood came in and I opened that door, and there it was to see—four pieces was all gone from the skirt and one piece was in the hole.

Q. What I wanted to know was whether you showed this same skirt on the same occasion to Mr. Behrend and Mrs. Klamp? A. Mrs. Klamp I showed the wrapper to that was pulled into the hole. I don't know whether she pulled it out or not. The dark skirt or wrapper, I don't know which; the wrapper was a small wrapper and it was all ate up.

Q. You do not answer my question; maybe you do not understand it. I want to know whether it was at the same time that you showed Mr. Behrend that skirt in the rat-hole that you showed Mrs. Klamp that skirt in the rat-hole—was that the same time? A. I guess so; yes.

Q. So each of them pulled it out of the hole? A. Well, Mrs. Klamp pulled it out of the hole and they put it in again.

Q. Then it was not the same time? A. It was not the same time they put it in again.

Q. Which was the first time, was it the time you showed it to Mr. Behrends or the time you showed it to Mrs. Klamp? A.

49 I cannot tell which was the first time; I cannot tell that; I cannot remember that. I guess it was Mr. Klamp first.

Q. What did you do with that skirt between the time that you showed it in the rat-hole to Mrs. Klamp and the time you showed it to Mr. Behrends? A. How do you mean?

Q. What did you do with it? A. I let it just drop and it was in the holes again of the rats. I was afraid.

Q. Did you keep any books of account to show how much stock you had in the store? A. Yes; I had a book, only I burned it up.

Q. When? A. Oh, long ago, when I cleaned up.

Q. Burned it up when? A. Well, when I gave up the store.

Q. That was after the trial before Judge Cole, was it not? A. Yes.

Q. You had books of account or some memorandum? A. Yes; I had books for my customers.

Q. And you destroyed them? A. Yes.

Q. Was that after you brought this suit? A. No; it was before, I think; I am not sure of everything; I cannot tell.

Q. You cannot tell whether it was before this suit or not? A. Yes; I destroyed that——

50 Q. You think it was before this suit? A. Yes.

Q. But at that time you intended to sue the District for those damages, didn't you? A. How is that?

Q. At the time you destroyed these books you intended to sue the District for those damages, didn't you? A. Well, you know, I don't know what I was a doing, I was so excited. I sold everything out—the counter, the show-cases, the show-window——

Q. I understand that. A. Then I burned up the books, too, because I didn't think I would use it again.

Q. Can you tell us how much stock you had in the store in 1894? Try and get back to 1894, if you can. A. The stock what I had before the stable was there—I had the sugar and had three or four boxes of soap of all kinds, and had everything I hoped to make the most on.

Q. I understand that, but I want to get some idea. These gentlemen ought to know how much stock you had. How much flour did you have in the store in 1894? A. Well, in 1894 I hadn't so much no more because I could not sell it.

Q. Did you have more than a barrel of flour? A. No.

Q. You had not more than one barrel of flour? A. Not more than one barrel of flour and one barrel of sugar and two or three or four boxes of stock of all kinds.

Q. How much was the stock worth of all kinds that you had in the store in 1894? A. About \$250.

51 Q. In addition to the flour and sugar, you had some soap? A. Yes.

Q. How much calico or cotton goods? A. I hadn't much of them. I had all kinds of stockings.

Q. I am going to get at them. Did you tell me how much calico you had in the stock? A. Well, I don't know how much.

Q. More than one roll? A. Well, I had different pieces, you know.

Q. Remnants? A. Well, different pieces.

Q. You bought remnants and had them in stock? A. I bought remnants, and then sometimes by the piece.

Q. What woolen goods, if any, did you have in stock? A. No woolen goods.

Q. What silk goods did you have in stock? A. I had no silk goods in there.

Q. What cloth goods did you have in stock? A. No cloth goods there.

Q. What do you mean by notions? A. I mean stockings, pocket handkerchiefs, hooks and eyes, silk, cotton, combs—everything that would be needed in a family.

Q. Did you have bonnets? A. No bonnets; only the ribbon I

had and trimming and all that—embroidery and everything in that line.

Q. Did the rats eat buttons? A. Yes; they eat them up.

52 Q. The buttons? A. Not the buttons, the embroidery.

Q. The rats injured the sugar and the flour and the bread?

A. Yes.

Q. Where did you put these things? A. Well, I had a closet back in the kitchen, and I had them to stay there, and after I could not make out no more I bought twenty pounds of sugar at a time, and I had that on a shelf, and I had coffee in a pan, and the butter and the lard and the eggs in the refrigerator, in the ice-box, and everything—I had plenty of shelving on the ceiling, where I kept everything in the boxes, and had a box of tacks and a box of—

Q. You put some things where the rats could not get at them?

A. The rats made holes in them and got them. Then I put the things in the doors. I stopped up the holes, and when I wanted the sugar or coffee or the flour—the rats they made holes in the doors and spilled everything.

Q. Did you not have as tenants in your house a Mr. and Mrs. Morrison? A. Yes.

Q. You know them? A. Yes; I know them.

Q. How long did they live with you? A. I cannot tell; about five or six months; but I cannot tell exactly.

Q. They lived there in the summer of 1894, did they not? A. I cannot tell. I guess it was '94 or '95.

53 Q. Have you seen either one of them recently about this case? A. Well, I wanted her the first time it commenced, only she didn't go. I wanted her for a witness, because she said to the neighbors she never could eat no breakfast for the smell.

Q. She said that, did she? A. Yes.

Q. To whom did she say that? A. To the people in the neighborhood.

Q. To whom? A. Mrs. Aaron, I guess it was.

The COURT: Did the witness hear her say it?

Mr. DUVALL: No.

By Mr. DUVALL:

Q. Do you say you heard her say that? A. Yes; that the smell was so bad.

The COURT: Did you hear her say that to other people?

The WITNESS: Only the other people told me.

The COURT: Then you only know what the other people have told you as to what she told them. You know what she told you, but you do not know what she told others except what others have told you.

The WITNESS: She told me myself.

By Mr. DUVALL:

Q. Did you not want Mrs. Morrison to testify for you in this case?

A. Yes.

Q. And she declined? A. She declined; she didn't go on.

Q. And did you not offer her four dollars to testify? A.
54 I offered her nothing. She owes me a plenty. She owes me fifty dollars, that Mrs. Morrison, and her trunk was in my house.

Q. You say you did not offer her four dollars? A. No; I did not. I didn't offer her nothing. I didn't offer nobody nothing.

Q. You tried to get her as a witness? A. Yes; I tried to get her as a witness as to the store where she was.

Q. And she declined to come? A. She didn't want to come, and I wasn't bothering no more.

Redirect examination.

By Mr. DOUGLASS:

Q. Did you keep any books regularly, except your customers' books? A. No; I paid cash for all I got.

Q. You did not have any charged accounts? A. No charged accounts.

Mr. DUVALL: My attention has been called to an omission.

Mr. DOUGLASS: You can proceed.

Cross-examination (continued).

By Mr. DUVALL:

Q. I was going to ask her about the amount of the stock in 1894. How much did you receive from sales each day in the store in 1894?

A. Well, I cannot tell. I know before the stable was there I made clear about—sometimes 30 dollars, sometimes 35 dollars, sometimes 40 dollars.

55 Mr. DOUGLASS: What was the question?

The stenographer read the question and answer.

The COURT: The first part is responsive; the second part should be stricken out.

By Mr. DUVALL:

Q. Can you give me your best judgment and recollection of the amount you received a day from the sales in your store during the year 1894? A. Well, I cannot tell. I don't think I made more than my living.

Q. I wanted to know if you could tell me how much money came into your store each day from sales.

Mr. DOUGLASS: She has answered that she cannot answer that question.

The WITNESS: I cannot answer that. I know what I made before the stable was there.

The COURT: You have told that.

By Mr. DUVALL:

Q. Well, how much did you receive each day from sales in 1893?

A. In 1893 my best business went right down a little. Then, in 1893—well, I didn't make any more money hardly; not much money.

Q. I want to know if you can tell me how much money you received from sales. I want to know how much money you got in your drawer from sales. A. I cannot tell.

Q. You cannot tell that? A. No; I cannot tell that.

Q. Can you tell me what your daily receipt from sales
56 were in 1892, before the stable was put up? A. Yes; I told that already.

Q. I am not asking your profits. I am asking you how much you received from sales each day. A. I cannot answer that. I said what I made free before the stable was there. I am sorry I cannot—

Q. Can you tell me how much you took in in any months in 1892? A. Yes. Didn't I tell you? 30 dollars, 35 dollars, or 40 dollars.

Q. That is the money that you took in, is it? A. Yes; that is the money that I made free.

Q. I want to know how much you took in. A. I never counted that. On a Saturday I had my regular customers. I sold fifty loaves of bread before I had my regular customers, and every Saturday they came and paid me some bills, and then I knew I could put away to a Monday morning 10 dollars. That is the nearest I can tell; I cannot tell nearer; I am not able.

Redirect examination (continued).

By Mr. DOUGLASS:

Q. In the trial before Judge Cole, that Mr. Duvall asked you about, in criminal court No. 1—do you recollect that as the courtroom right across here—do you remember whether or not Judge Cole finished the trial of that case or whether he said he did not have time then to finish it? A. He did not finish.

Q. He did not finish trying it? A. He did not finish.

57 Q. You have been asked about having dyspepsia before this stable was completed. Did you have it at the time it was completed or were you well of it? A. I was well of it.

Q. Entirely well of it? A. That was only that Dr. Prentiss was here before I got well.

Q. Did you go to any doctor's regularly before the stable was erected? A. That is all I did.

Q. How many times? A. Two times; then I got well.

Q. When Dr. English advised you to get another set of teeth did you get it? A. I didn't get them; I had no money.

Q. You have a set of teeth now? A. Yes; because it takes money, and he wanted me to get gold or silver.

Q. Did you get well of that dyspepsia with that set of teeth you

have now? Is that the same set of teeth you had? A. No; it is different.

Q. Did you get another set of teeth? A. No.

Q. That is the same set? A. Yes.

Q. And with that same set of teeth you got well of the dyspepsia before the stable was completed? A. Yes.

Q. Were you in good health or bad health when this stable was completed in 1893?

58 Mr. DUVALL: I object. That was gone into in chief.

Mr. DOUGLASS: I am very anxious to have this matter perfectly clear, as to the actual condition of her health at the time these people moved into this stable.

After further argument the question was withdrawn.

By Mr. DOUGLASS:

Q. Mrs. Roth, Mr. Brandenburg or Mr. Duvall asked Dr. English yesterday if he advised you to move out of this house. Is that true? A. Yes; he advised me all through.

Q. Did you do it? A. I didn't do it. I couldn't do it. I had nothing to do it —. Wherever I had to go I had to have money, and the District made a poor woman out of me.

Q. You are unable to do it? A. I am unable to do it, and I cannot do it now. I have no money. I am poor.

Recross-examination.

By Mr. DUVALL:

Q. You say that there was a case commenced before Judge Cole and not finished? A. I don't know what. Well, we had—I don't know.

Q. Was there not a case of your claim against the District that was finished, on which you got the money? A. Yes.

Mr. DOUGLASS: I object to the question, and move to strike the question and answer out upon the ground that they have no right to recross-examine the witness upon that. They asked about
59 the testimony she gave in criminal court No. 1, and I simply asked her did Judge Cole finish that case.

Mr. BRANDENBURG: And we want to show that that is not the same case.

Mr. DOUGLASS: I object to it upon the further ground that the record is the best evidence.

The COURT: I suppose that is true, strictly speaking. You are asking now the result of the case before Judge Cole—if there was not a case there that was concluded?

Mr. DUVALL: Yes, your honor, and if that was not the case in which he testified and in which Doctor English testified?

The COURT: You might ask her that question, I think.

Mr. DOUGLASS: What is the form of the question now? Let us hear it.

The COURT: Whether she did not testify in a case before Judge Cole which was concluded, in which there was a result, a verdict

Mr. DOUGLASS: Without stating what the result was?

The COURT: Yes.

Mr. DOUGLASS: I have no objection to it in that form.

By Mr. DUVALL:

Q. And did not Doctor English testify in that same case with you in which you got a verdict?

Mr. DOUGLASS: One moment. That is objectionable.

The COURT: In which there was a result?

Mr. DUVALL: Well, I will change it that way.

By Mr. DUVALL:

Q. Did not Doctor English testify in a case before Judge Cole, in which you testified, in which there was a result? A. That was the first, you mean?

60 Mr. DUVALL: Yes.

A. I guess he did.

Q. And you testified also? A. Yes. I could not testify much because I gived out right away, but I was there.

By Mr. DOUGLASS:

Q. Do you know what part of your testimony was allowed—what things you were allowed to testify to and what things were excluded—in that trial? A. I guess about the same—about my health, about the smelling, and——

Mr. DOUGLASS: That will do.

(Witness excused.)

Thereupon Dr. CHARLES H. ENGLISH, a witness produced on behalf of the plaintiff, having been first duly sworn, was examined, and testified as follows:

Direct examination.

By Mr. DOUGLASS:

Q. What is your full name? A. Charles H. English.

Q. What is your residence and place of business? A. My residence is 1315 M street northwest; my office is 1116 F street.

Q. What is your profession? A. Physician.

Q. How long have you been engaged in the practice of medicine?
A. A little over eleven years, regularly; irregularly, about eighteen years.

61 Q. Doctor, do you know the plaintiff, Mrs. Catherine Roth?

A. Yes, sir.

Q. How long have you known her? A. About fifteen years.

Q. Before you were regularly and exclusively in the practice of your profession, Doctor, were you at any time in the employ of the District of Columbia? A. Yes, sir.

Q. Where and when? A. I was clerk at the station on Fifth street at the time of the erection of the stable. I was there until 1895; the beginning of 1895—February, 1895.

Q. And you were there prior to 1895 some time? A. Yes, sir.

Q. You were clerk in the District of Columbia station-house? A. Yes, sir; No. 2 police station.

Q. Is that close to the present ambulance stable? A. It adjoins it on the south.

Q. On the south? A. Yes, sir.

Q. The ambulance stable was then built to the north of the station-house and between the station-house and Mrs. Roth's property? A. Yes, sir; between the station-house and her property.

Q. Do you recollect about when it was completed, the ambulance stable? A. In the spring of 1893—I am not sure.

62 Q. Were you employed by the District then? A. Yes, sir.

Q. At the station-house at that place? A. Yes, sir.

Q. You remained there until about what time? A. About February, 1895.

Q. What were your duties? A. What were my duties?

Q. What were your duties there? A. Clerical duties, keeping the records of the officers and police duties of the precinct.

Q. You are familiar with the location of the patrol stable, or rather ambulance stables, and the station there? A. Yes; I think I am.

Q. I mean, of course, after the construction of the ambulance stable. A. Yes, sir.

Q. Were any horses kept in the stable connected with the station-house as distinguished from the ambulance stable? A. There were; yes. There was a separate stable on the south of the station where originally the patrol horses were kept, where there were private horses—private property.

Q. So that there were horses kept in the stables at the station-house proper? A. Yes, sir.

Q. And there were horses kept in the ambulance stables, too? A. Yes, sir.

63 Q. Do you know whether they had any place for the placing of the manure that belonged to the ambulance stable other than the place for the manure from the patrol stable? A. I could not say. I have no knowledge of that part of the business. I know they kept manure back of the ambulance stable. If there was any second place I do not know.

Q. Did you ever know of or see any other place for the keeping of manure in connection with either stable than the place where they kept it—to the northwest of the corner of the ambulance stable? A. I think there was another place, but whether it existed subsequent to the erection of the ambulance stables I do not know.

Q. You know the general place where manure was kept after the erection of the ambulance stable? A. Yes, sir.

Q. Where was it? A. Immediately to the rear of the ambulance stable.

Q. How close is that to Mrs. Roth's lot? A. It adjoins the premises.

Q. Do you recollect whether there is any house or shed adjoining the manure pit on Mrs. Roth's lot? A. I could not say. I do not remember.

Q. During the time you were in the employ of the District government, after the erection of the ambulance stables, say, in 1894 and 1895, how were the odors from the manure pit? A. I left there in February, 1895.

Q. How were they in 1894 and up to the time you left there?

64 A. They were very bad at times, depending on the direction of the wind and weather. It was a question of when the wind was from the west and south.

Q. Were they better or worse in the summer time, spring and fall? A. In dry weather they would not be so bad, but during wet and heavy weather they were quite bad at times.

Q. Were these odors noticeable or offensive in the station-house, where your office was? A. At times; yes, sir.

Q. Were they ordinarily bad or exceptionally bad? A. There were times when they were exceptionally bad. Of course, occasionally; they were not persistently that way.

Q. The office you occupied in the station-house, was it closer or further away from Mrs. Roth's house than the pit was? A. It was further away.

Q. From what direction would the wind have to come for you to get the worst form of these odors, or the worst effect of these odors? A. From the west.

Q. West or northwest? A. West and northwest; blow through the stables.

Q. What winds would bring those odors through in their worst condition and worst form to Mrs. Roth's house? A. I presume from the southwest.

Q. Southwest? A. I should think so, south or southwest and west.

Q. Do you know—I do not know what your answer will be, but I want to ask you—do you know whether or not there was any regularity as to the time of removal of the manure from this
65 pit? A. There is no regularity, because I know numbers of instances where complaint was made about its retention there, being foul.

Q. During 1894 and up to the time you left there? A. Various times; yes, sir.

Q. About how long would that be left so? A. I could not state how long it had remained there, but I know it was very bad. I know at times of its being very bad, very foul.

Q. You say you know there was no regularity as to the time? A. At times there was no regularity, because complaints were made that the manure was not removed by the stableman.

Q. Do you know whether or not there was provision for the removal of this manure by the District authorities? A. I could not

say whether there was any regular provision made. I know it was removed at times, but whether there was any regularity about it or not I could not say—that is, regularity as to provision for removing it.

Q. You do not know anything about that? A. No, sir; I do not know whether it was done by the same company or the same individual. I only know it was removed at times.

Q. Did you have anything to do with the employees of the ambulance stable at all? A. No; not directly.

Q. Do you know who had the duty of cleaning those stables, whether they had any regular stableman or not? A. Yes, sir; they had a stableman—that is, a driver of the ambulance. I do
66 not know whether they had any additional man.

Q. They had the drivers of the ambulances? A. (continued). But I think they looked after their individual teams. I do not know whether they had any additional employees.

Q. You knew no other employees outside of the drivers of the wagons? A. No, sir.

Q. State what those patrol wagons and ambulances were used for which were stored in the place? A. Almost everything; bringing in prisoners, carrying persons to the various hospitals and injured persons to their homes.

Q. Emergencies of all sorts? A. Of all kinds.

Q. Do you know how many horses were kept in there? A. No, sir; I could not say.

Q. About how many? A. No; I could not be positive on that.

Q. What observation did you make with reference to rats about the premises while you were there? A. Rats were very plentiful.

Q. Do you know of any provision that was made to prevent them or destroying them, while you were there? A. No special provision that I know of.

Q. You never heard of any? A. No, sir; not that I know of.

Q. You say they were very plentiful? A. Yes, sir.

Q. Do you know of your own personal knowledge whether any disinfectants were used to prevent the odors from that stable?

67 A. I do not know of the use of any; I do not remember the use of any.

Q. Now, state whether or not it would have been possible to have used disinfectants to prevent the odors. A. I could not say. I could not answer that question, because my knowledge of the stables was not sufficient.

Q. You do not know of any being used? A. No; I do not know that they were used. I do not know anything about it. If they were used, I do not know anything about it.

Q. Did you ever have occasion to attend Mrs. Roth professionally? A. Oh, yes; many times.

Q. Did you attend her prior to the erection of this ambulance stable? A. Yes, sir.

Q. Will you state to the court and the jury what was the general condition of her health prior to the erection of these stables? A. At the time of the erection her health was good.

Q. What was the condition of her health during the years 1894, 1895, and 1896, and subsequent thereto? A. Her health has been bad; quite bad.

Q. You may state to the jury what diseases or troubles she has been suffering from. A. Well, she complains of insomnia; various nervous phenomena.

Q. What? A. Phenomena; nervous conditions generally; loss of appetite, unable to sleep, complaints of nausea, headaches—

68 Q. Nausea, headaches, insomnia, and so forth? A. Yes, sir.

Q. What condition did you find her nervous system in subsequent to the erection of these stables, especially in 1894, 1895, and 1896? A. It has been progressively bad.

Q. Go a little more into detail as to what you mean by the expression "progressively bad." A. She has apparently grown worse. Her health has been greatly undermined. Whether it is due to the condition of the stables there or not—

Mr. BRANDENBURG: What was that question?

A. (Continuing:) I could not say positively.

(The stenographer here read the question.)

By Mr. DOUGLASS:

Q. To what do you, in your professional opinion, attribute her failing and bad health? A. Well, she is affected with insomnia and from insomnia many conditions may arise.

Q. A gradual undermining of the vital forces due to loss of rest produces many injurious results? A. Yes, sir.

Q. Before asking you your opinion about it, were you in that house frequently during those years 1894, 1895, and 1896? A. I cannot say frequently; I have been in there a number of times.

Q. A number of times during those years? A. Yes, sir.

69 Q. What did you observe or notice, if anything, with reference to the odors that were in that house during those years? A. Well, the odors were not anyways pleasant.

Q. How were they, what were they? Just describe them. A. They were disagreeable, quite disagreeable in there. It was simply a disagreeable odor. I could not describe any particular odor.

Q. Did you have any odors there from the stable? A. Well, of course it smelled of manure at times.

Q. How was that smell? A. How do you mean; how was the smell?

Q. I want you to describe whether it was bad, ordinarily bad—very bad. A. I cannot make any distinction. I do not know where there is any line of demarkation as to what is ordinary and what is extraordinary.

Q. But you certainly can tell whether it is pleasant or unpleasant, good or bad? A. I should not think they were good, the odors of manure. Some people might not object to it, but I should.

Q. How did you find those odors in this house; were they ordinary or were they very bad, Doctor? I want your judgment and recollection. A. At times they were quite bad. At times the odors there from manure were quite bad.

Q. Did you notice those odors in one portion or different portions of that house? A. Well, I was only in the store and the adjoining room, and I do not remember. I do remember once
70 of having gone upstairs, but only once. She occupied the room adjoining the store-room, and at the time she was ill and confined; I remember she was there. These are the only two rooms I can say I know.

Q. Were you in the yard at all—the back premises? A. I cannot say that I was. I do not remember going back there.

Q. Did you see any signs of rats in that house? A. She called my attention to rat-holes.

Q. What did you see? A. I saw where the rats had burrowed about and eaten through the wood and into the rooms—through the plaster into the rooms.

Q. About what was the extent of your observation about that? A. I could not say. I did not pay much attention to it. She called my attention to it and I observed it, that is all. I know that they were there; of what number and what size I could not tell.

Q. What did she complain of, Doctor, during the times you were attending her professionally? A. She complained of insomnia, and she could not rest—had no appetite—had lost her appetite, and was failing generally, and could not digest her food, and her stomach was in bad shape.

Q. Did she complain, Doctor, of any of these matters I have been asking you about—about the odors and about the rats and flies? A. Yes, sir.

Mr. DUVALL: I object to that.

Q. Did she complain of the conditions about the premises?
71 A. Yes, sir.

Q. What did she complain of? A. She complained that the rats annoyed her and destroyed her property. She was unable to sleep because of the horses running in and out, and the ambulance going in and out and sounding the gongs, and discussions between employees, and rats and the flies, and the odors of manure.

Q. Did she complain of those things affecting her ability to sleep? A. Yes, sir; she said she was unable to sleep.

Q. Did she make these complaints while you were attending her professionally? A. Yes, sir.

Q. Did she complain once, or more than once, about these things you have described? A. She has complained every time I saw her.

Q. Now, Doctor, considering the surroundings and your observations and study of her case and all of the conditions, to what did you then and to what do you now attribute, in your professional opinion, the cause of her present ill health? A. Well, I believe

her health has been destroyed by the conditions arising there at the stables.

Q. At these stables? A. Yes; she has been unable to get her rest, to take sufficient nourishment, or to retain it in her stomach. She was constantly worried and annoyed, according to her statements, which are evidently correct.

Q. You say, in your opinion, you attribute her present ill health to the condition of the stables? A. Yes, sir.

72 Q. What did you say was the condition of her health before the stables were put there? A. Her health was good; her general health was good at the time the stables were built. At least I do not know of anything the matter with her at that time. She was not regularly sick, as she has been since.

Q. Do you know whether or not she has suffered much during the period of time I have been asking you about, 1894, 1895, and 1896, since? A. She has, I guess, suffered a good deal. From her appearance she has; yes, sir.

Q. In your professional opinion would you say that her health is temporarily impaired or permanently impaired? A. Oh, no; her health is permanently impaired, at her age. She has passed the age of recuperation.

Q. Does the effect confine itself to her body or has it affected her mind also?

Mr. DUVALL: I object to that because the declaration does not contain it.

(Argument followed.)

The COURT: It is competent under those allegations that she lost her health, and that disease or impairment of health has affected her mind to the extent of disturbance or anything of that kind—her ordinary enjoyment of her mental faculties, eating, thinking, reflecting; but, of course, if there is any desire to show that she is insane, that would not be right without special allegations; but under the allegations of loss of health, to show the character of that loss and how it has affected her physical and mental enjoyments, proceed with the examination of the witness.

73 Mr. BRANDENBURG: I note an exception, if your honor please.

(The question was read by the stenographer as follows:)

"Does the effect confine itself to her body or has it effected her mind also?"

Mr. DOUGLASS: Strike out that question and I will put it this way.

By Mr. DOUGLASS:

Q. Doctor, in your professional opinion, in what way and to what extent has the ill health from which Mrs. Roth now suffers affected her capacity for enjoyment, mental or physical?

Mr. BRANDENBURG: I object to that. I make the same objection in so far as this question relates to the effect on her mental faculties.

The COURT: I think it is proper.

Mr. BRANDENBURG: I note an exception.

Mr. DOUGLASS: Of course we struck out the other question, and the exception will be struck out with it.

By Mr. DOUGLASS:

Q. Do you understand the question, Doctor? It is somewhat involved. A. Yes, sir; I understand what you mean. There is a certain amount of perturbation there. She is not insane, but she is erratic. There has been a deterioration of her faculties. I should not say she is insane, but she is decidedly erratic.

Mr. BRANDENBURG: Because of the purpose, undoubtedly, of counsel to attain the same object by means of the answer being suggested by the original question I move to strike out the answer so far as it relates to the mental trouble from which the plaintiff is suffering.

The COURT: Let me see the declaration.

(The declaration was here handed to the court.)

Mr. BRANDENBURG: Look at the first count, the last four lines.

Mr. DOUGLASS: If your honor will turn to the second page of the declaration I will show your honor the portion pertaining to that.

(Mr. Douglass here read from the declaration.)

The COURT: In the third count you claim damages for the injury to her health because of the offensive odors. In the second count you claim damages because——

Mr. DOUGLASS: The second count is for the destruction of her business, and the third count is for the deterioration of the value of her property.

The COURT: The first count is for her health?

Mr. DOUGLASS: Yes, sir.

The COURT: What was the doctor's answer?

(The answer of the witness was read by the stenographer as follows:)

"A. Yes, sir; I understand what you mean. There is a certain amount of perturbation there. She is not insane, but she is erratic. There has been a deterioration of her faculties. I should not say she is insane, but she is decidedly erratic."

The COURT: Perhaps that is not exactly an answer to the question you asked.

Mr. DOUGLASS: I asked the doctor for an answer as to her capacity for enjoyment. I would rather confine it to that.

75 Mr. BRANDENBURG: I understand the jury are not to consider anything that has been said regarding the mental condition of the plaintiff?

The COURT: It is to be stricken out, and it is as though he had asked no question. It is not before the jury.

By Mr. DOUGLASS:

Q. In what way and to what extent does the condition of her health, impaired as you have described it, affect her capacity for

physical enjoyment or for enjoyment of life? A. I do not know that she is competent to enjoy anything in life.

Mr. BRANDENBURG: I presume the same rule will apply that we understand in regard to the answer of the witness to the last question that he is referring to the physical effects.

The WITNESS: Both physical and mental.

Mr. BRANDENBURG: He says both physical and mental. So far as it relates to the mental the answer of the witness was not called for.

Mr. DOUGLASS: I am willing that the answer so far as the mental condition is concerned shall be stricken out.

The COURT: He may answer as to the physical. As to the mental question, the stenographer will strike that out.

Cross-examination.

By Mr. DUVALL:

Q. How often have you testified in the case of Mrs. Roth against the District of Columbia? A. I believe I have been summoned here every time.

76 Q. I asked you how often? A. I could not say how often, but I know I have been here, I think, every time the case has been on trial.

Q. I want to know how often you have testified on the witness stand? A. I could not tell you.

Q. Don't you know whether you have been in the witness box half a dozen times? A. I might say a half a dozen times and I might be wrong and I might be right.

Q. What is your best recollection? How often have you taken the witness stand in the case of Mrs. Roth against the District of Columbia? A. I could not say positively.

Q. I asked you for your best recollection of the number of times you have testified. A. I would not venture an opinion, because I am not able to say positively. I know I have been down here a number of times, but I would not say positively.

Q. Did you keep a record of your work as a physician? A. Yes, sir.

Q. Have you it with you covering the years—during the years you have testified to? A. No, sir; but I could get it for you very readily.

Q. When you were last examined, when the case was tried before Judge Bradley, were not you asked to produce your records in order to locate the time of your visits? A. You asked me, I think, if I couldn't produce a record, and I told you if I was excused by the court I could go and get the record for you.

Q. Have you your records? A. Not here. I have no records here.

77 Q. You knew that you were to be examined on the same subjects as during the previous cases? A. No, sir; I had no idea—

Q. You had no idea what you would be examined on? A. I could not foretell. I am not a fortune-teller.

Q. You had no suspicion? A. I had a remote suspicion that it was in regard to Mrs. Roth's suit, but I could not put the words into your mind.

Q. I am not speaking about that. I did not call you. A. I am subject to your wish and will.

Q. You understood, when you were summoned to testify, that you were to be called to testify to Mrs. Roth's physical condition from the standpoint of a physician? A. Did I know it?

Q. Didn't you understand that that was what you were to testify to? A. I did not give the matter any thought. I have been so annoyed by the case that I did not give the matter any thought. I am down here, but not with my wish and will.

Q. When did you first give any professional advice to Mrs. Roth? A. I think it was about 1889 or 1890.

Q. Have you a memorandum which will show the date? A. I guess I have.

Q. Will you produce it? A. It is quite a long time; yes; if you will excuse me I will go and get it. I know it was an injury to the head. That is the first time I ever saw her, and that is
78 some ten or eleven years ago; the exact date I am unable to say.

Q. Your books will show the date? A. Yes, sir.

Q. Will your books show the nature of the service you rendered or the nature of the ailment of the patient? A. Merely a visit.

Q. What was the occasion of your treatment of her in 1889? A. I think it was at that time she had a contused wound in her head.

Q. How had she been wounded—what was the occasion of it? A. She had been assaulted by some ruffian who had gone in and attempted to outrage her, I believe; at least, he had assaulted her with some blunt weapon.

Q. Undertook to outrage her, and struck her in the head with some weapon? A. With some blunt instrument.

Q. What was her nervous condition as occasioned and resulting from that blow? A. She was prostrated for a time, but she recovered from that. Dr. Prentiss was in that case, but unfortunately he is dead now.

Q. Who is that? A. Dr. Prentiss.

Q. And what other physician besides Dr. Prentiss? A. Only Dr. Prentiss and myself.

Q. When did you commence—how often did you call upon her with reference to that or she upon you? A. I saw her every day for a while.

79 Q. You were alone, or the other physician in connection with you? A. Sometimes Dr. Prentiss was with me and sometimes he was not.

Q. Your book will show the number of visits you made, then? A. I presume it will.

Q. When next did she consult you in reference to her physical

ailments? A. Well, I could not say positively, the succeeding time.

Q. How often before 1893 and after the visits on account of this blow upon her head did you visit her professionally? A. After the blow upon the head and before 1893?

Q. Yes. A. Well, I suppose two or three times, perhaps; perhaps not that often.

Q. What was the occasion of visiting her—what was her ailment? A. Some slight ailment or other; I do not know that it was anything serious.

Q. Was it not for stomach complaint? A. I would not say positively.

Q. Have you not so testified? A. I might have; it is just possible that she had an attack of acute indigestion or something of that kind. It was nothing serious, however.

Q. Did you treat her for stomach trouble in 1889 or 1890? A. I would not like to say positively. I might have treated her
80 and might have seen her with reference to stomach trouble at one time.

Q. Will your records indicate that? A. I presume they will.

Q. At the last trial were you not asked this question, and did not you make this answer:

“Q. What did you attend her for? A. Stomach troubles, I think, but I am not sure. I cannot tell positively until I look at my records. I think it was two years afterwards that I was called in.

Q. Then after that? A. Perhaps a year or two years after that.

Q. What did you treat her for? A. I cannot say; some small ailment; indigestion or something like that.”

A. Did I testify to that?

Q. Yes, sir. A. I cannot say. I had enough to think of without that.

Q. What do you say now? A. I might testify to the same thing. It is the best of my recollection, that I am telling you the truth. I have no recollection. The matter is not of such vital importance.

Q. Did you attend her in 1892? A. 1892?

Q. 1892. A. I could not say positively; if I did it was not for much.

Q. Did you attend her in 1893? A. Yes; I imagine I did.

81 Q. Have you any recollection? A. No positive recollection.

Q. For what did you attend her in 1893? A. Well, her general condition, off and on. She was not—I treated her for the conditions specified, as enumerated, treating nervousness and stomach troubles and nausea, off and on. There has been that limit and limitation to her condition. It has generally been along those lines that I have treated her.

Q. Stomach trouble and nausea, 1893, I am talking about now, and prior to 1893—the same ailment and same treatment? A. No; I did not say that.

Q. I want to know whether you would say it? A. No; I would

not say so. I may have treated her, but the matters were not of such importance but what it has drifted out of my mind. I might have treated her for those conditions at that time, but I have no specific knowledge.

Q. You mean prior to 1893? A. No; I won't say prior to 1893.

Q. In 1893? A. Particularly in 1893 she began to grow rapidly worse, and came to me more frequently; I know that.

Q. If she began to grow worse in 1893, that is based upon a bad condition that is prior to that, to your knowledge, isn't it? A. No, sir; it was not based upon any condition, not specially. It was an increased number of visits, that is all.

Q. Then, in 1893 what was the occasion of her disorder then?

82 Q. What do you mean by the occasion of the disorder?

The COURT: The cause.

The WITNESS: The cause?

Q. The cause; yes, sir. A. I could not say positively.

Q. That was the time they had commenced to build the stable, wasn't it, and they had torn down her fence and interfered with her property? A. That had begun, I believe, in 1892, and they completed it in 1893—1892 and 1893—the spring of 1893, I think; I am not sure, but I think that is about the date.

Q. Immediately after the completion of the ambulance stable you treated her, did you not? A. I would not say immediately after; what do you mean by "immediately after"?

Q. During the year following that. A. A year?

Q. During the year following that. A. Oh, yes; there is never a year I have not seen her.

Q. What was the cause of her condition then? A. I do not know what the cause was.

Q. Was it not that they had interfered with her property and torn down her fence in building the ambulance stable? A. I do not know what that cause was, of her getting sick. Of course, she has told me that every time she has come to see me.

Q. That was the cause that was disturbing her mind? A. Yes, sir; that is what she said.

Q. That is the constant complaint she was making? A. It
83 was a constant complaint with her, I know that.

Q. Were you not asked these questions at the last trial before Judge Bradley and did not you make the answers which I read:

"Q. They took down the fence and interfered with her property; she was very much worked up about it? A. She complained of it; I know she complained of it at the time.

Q. And she complained about it afterwards? A. Oh, of course; it became chronic; she always talks about it.

Q. How soon after that did you commence to discover her nervous condition? A. It was some time after that; I cannot say positively; of course it might have been three or six months; I cannot say.

Q. You are positive that it was about three or six months after the work of constructing the ambulance stables? A. I presume it was; I know I visited her numerous times."

Did you not make those answers to these questions? A. I might have.

Q. Are the answers correct? A. I do not know.

Q. In what respect are they incorrect? A. Do you mean do I recognize them as correct statements at that time?

Q. I ask you if these questions were not asked you and these answers given by you? A. I cannot recollect whether I gave those answers.

Q. I want to ask you whether those answers are not correct and the questions, as I read them? A. In the main; yes, sir.

Q. Did you not also say in the same examination, answering the questions as I read them:

"Q. What was her condition when you visited her after the stable was started? A. She was a very vigorous woman.

Q. Suffering from nervousness? A. Not to any extent.

Q. What did you treat her for? A. I can't recollect now positively what I treated her for. It might have been a little stomach trouble. I know I treated her more for that than anything else."

What have you to say as to whether these questions were asked you and you answered them in that way? A. I might have.

Q. It is a correct answer to the question? A. I do not know now.

Q. Sir? A. I could not recollect whether I made that statement or not.

Q. Are the facts stated in the answer true now? A. Will you kindly read it over?

(Mr. Duvall here repeated the above quotation from the testimony at a former trial.)

— I want to know whether that is correct—

Mr. DOUGLASS: I want to know whether it was prior to or subsequent to the erection of the stable. I think the witness is entitled to know.

Mr. DUVALL: After the stable was started.

A. Chiefly that was her ailment; yes, sir.

Q. Did you advise Mrs. Roth to leave the premises in 1896 or 1897? A. Yes; I advised her a number of times to leave the premises.

(At this point the court took a recess until 1 o'clock p. m.)

After Recess.

Thereupon Dr. CHAS. H. ENGLISH resumed the stand for further cross-examination.

By Mr. DUVALL:

Q. You remember the last trial of this case before Judge Bradley, do you not? A. I do.

Q. Did he not ask you some questions? A. I don't think he did ask me any direct questions. I think he repeated several of your questions, but I do not think he asked me any independent questions.

Q. At that time did I not ask you this question: "What was the character of the stomach trouble that you first observed?" and did you not answer, "Well, there were symptoms of catarrhal disturbance and chronic dyspepsia"? A. No; I don't think I did. I am not sure, but I don't think I did.

Q. Do you say that you did not answer the question in the way in which I have read the answer? A. It may have been catarrhal conditions. There was no catarrhal dyspepsia.

Q. Chronic dyspepsia? I will read the question and answer again: "What was the character of the stomach trouble that
86 you first observed?" and the answer was, "Well, there were symptoms of catarrhal disturbance and chronic dyspepsia."
A. No; I did not say chronic dyspepsia; acute dyspepsia or catarrhal conditions, but I did not say chronic dyspepsia.

Q. There were acute catarrhal symptoms? A. There may have been at that time.

Q. But you think you did not say chronic dyspepsia? A. I am quite sure I did not.

Q. You may have said dyspepsia? A. I may have said dyspeptic symptoms; yes, sir.

Q. And immediately following that:

"By the COURT:

Q. As you first observed them? A. No; as it is now. I know when I first treated Mrs. Roth she complained of her stomach and I know this developed.

Q. Caused by loss of teeth? A. At that time she had them made at my suggestion.

Q. Could it be caused by loss of teeth and inability to masticate the food? A. Yes.

Q. So that her condition might have resulted from imperfect mastication? A. Yes; it might have resulted.

Q. It was a catarrhal trouble? A. Yes.

Q. How does that affect her? A. By the aggravated condition of the digestive functions—nausea and vomiting.

87 Q. That was when you first called? A. No; I am speaking generally.

Q. I am trying to get at her condition when you first called. A. When I first called she was ill occasionally ; her troubles were very slight ; she was not much disturbed.

Q. You stated you treated her two weeks for the injury to the head. A. Yes ; I presume that it was two or three weeks."

The court's questions ceased then, and I asked you—

"Q. What are the symptoms and what is the cause of the catarrhal condition of the stomach," etc.?

Q. What have you to say as to the questions of the court, and your answers to those questions ; were such questions asked and did you answer them as I have read ? A. I could not recall whether I did or not.

Q. Do you think that you did not ? A. No.

Q. You simply have no recollection of it ? A. No definite recollection.

Q. Have you any recollection that such questions were asked and you made such answers ? A. No, sir ; I have not, except in a general way I remember questions of that character were asked, but whether by you or the court I do not remember.

Q. Were your answers as I have read them correct ? A. Well, they are correct if you refer to persistent or chronic catarrhal condition, or rather dyspeptic condition developing subsequent to the original weakness—that is, when she first came under my treatment there was no condition of chronic dyspepsia at that time.

88 The ailments were, as you said there, of a slight character, of a temporary character—a temporary indisposition.

Q. There was dyspepsia, though, when you first treated her ? A. There were symptoms of dyspepsia ; yes, you might say ; but that did not necessarily signify chronic dyspepsia.

Q. But when you first treated her there were symptoms of chronic dyspepsia, that is right ? A. That is right ; yes.

Q. And those symptoms increased as you subsequently treated her ? A. They increased after a time ; yes.

Q. Until they became chronic ? A. Well, they became chronic in advance, you understand. I mean after the lapse of several years.

Q. That condition might be caused by the loss of teeth, might it not ? A. It could be partially caused by the loss of teeth ; yes.

Q. And the imperfect mastication which would result from the loss of teeth ? A. Well, that would depend upon the class of food that was digested. Doing without food would not produce indigestion or dyspepsia.

Q. You advised her to get teeth, did you not—new teeth ? A. I don't remember that I did. I would not be surprised if I did, if she lacked necessary teeth.

Q. Have you no recollection of that ? A. I do not remember that incident.

89 Q. And you do not remember that you so answered in reply to the question by the court ? A. No ; I cannot say I remember them definitely.

Q. Was not this question asked you, and did you not answer it as I read it, at the same trial: "Q. What are the symptoms and what is the cause of the catarrhal condition of the stomach? A. Well, the catarrhal condition of the stomach may be caused by a multiplicity of things—absence of teeth and lack of proper mastication and in the persistent use of alcohol; that would produce chronic dyspepsia—well, many things would come under that head, but these are the chief causes; it is due to lack of proper mastication in some cases, and in some cases it is due to the persistent use of alcohol; of course chronic dyspepsia may result from a cold or a shock if the tooth is decayed." Was that question asked and answered as I have read it? A. I could have correctly given that answer; yes, sir.

Q. Then this question: "Q. They are the causes; what are the symptoms of catarrhal dyspepsia?" and your answer was: "Feeling of weights, pressing on one, the condition what is commonly called heartburn, vomiting, headache, lassitude." Was that question asked and that answer given? A. I don't remember.

Q. Is it correct? A. It would be correct; yes.

Q. And these further questions and answers:

"Q. What effect has it on the mind? A. Depressing effect on the mind.

90 "Q. And if that condition continues for any length of time what is the further effect on the mind? A. Well, that depends upon the care the patient gets.

"Q. It has a tendency to impair the mind? A. It might produce melancholy.

"Q. It has a tendency to impair the mind? A. I will not say it has a tendency to impair the mind unless you consider melancholy——

"Q. Has it any effect on the nervous system? A. It makes a person irritable.

"A. Any other effect? Q. A person in that condition will complain of being unable to rest, unable to eat; and have pains, have nausea."

Were those questions asked you and did you answer them in that way? A. I do not remember that those questions were asked me, but they could be answered in that style, in that manner.

Q. They are correct answers to such questions? A. Partially yes. Incompletely I mean.

Q. The blow on Mrs. Roth's head was a shock to her nervous system, was it not? A. Yes; certainly.

Q. At the same trial was not this question asked you and did you not answer it in the way I will read:

"Q. Her health was bad in 1893. A. Yes; that is, she required occasional services of a physician. I only saw that she was confined to her bed?"

A. I never saw that she was confined to her bed.

91 Q. Let me read the first part of the question: "Her health was bad in 1893? A. Yes; that is, she required occasional services of a physician." Is that right? A. Yes, sir.

Q. You testified in the trial of the case before Judge Cole, did you not, when she got a verdict against the District? A. I cannot say now whether I did or not. It seems I have been in all of those cases.

Mr. DOUGLASS: One moment——

By Mr. DUVALL:

Q. In the criminal court room on the other side, I mean. A. I may have testified in that case, but I do not remember.

Q. You have no recollection of that? A. That matter was not of such importance to me that it dwells in my mind. I dismissed all subjects from my mind after leaving the court-room. I am simply here on subpoena, and I would not be here otherwise, I can assure you.

Q. You have no recollection whether you testified in the trial of the case before Judge Cole in the criminal court room or not?

Mr. DOUGLASS: Objected to on the ground that it is irrelevant, and, further, there is no evidence of the case being tried before Judge Cole, and these gentlemen cannot do by indirection what they cannot do by direction.

92 Mr. DUVALL: It is to test the memory of the witness. I want to know whether he can recall whether he was a witness before Judge Cole in November, 1896.

The WITNESS: I was a witness before Judge Cole in several cases.

The COURT: It is competent to ask him that for the purpose of testing his recollection.

The WITNESS: In several cases I was a witness before Judge Cole, but I cannot remember positively whether I was a witness in this case.

By Mr. DUVALL:

Q. You have appeared before Judge Cole as a witness in Mrs. Roth's case against the District of Columbia? A. I may have.

Q. Do you say you have not or you have? A. I do not say either.

Q. You have no recollection of it? A. No positive recollection.

Q. The last trial of Mrs. Roth's case that you appeared in you appeared before Judge Bradley, did you not? A. Yes; I remember that.

Q. That was the last trial. Then you appeared in another occasion at another trial of the case before another judge, did you not? A. I have no recollection of appearing before—if I did, I do not remember it. In fact I am quite sure I did not, because I have no recollection of appearing before any other judge in this case.

Q. In your testimony in the trial of the case before Judge Cole did you not go over all these matters of injury up to the time
93 of the trial? A. Whatever I testified to then I have not the remotest idea of now. What I did testify to was the truth.

Q. You testified, though, at that trial, relative to all the facts relating to her physical condition and her ailments? A. I did.

Q. You did? A. You say I did.

Q. I ask you. A. I have no recollection.

Q. What did you testify about? A. I do not know.

The COURT: Has he answered that he had no recollection?

Mr. BRANDENBURG: You have a recollection of appearing before Judge Cole?

The WITNESS: But not in this particular case.

By Mr. DUVALL:

Q. But in Mrs. Roth's case for damages to her property? A. I refer to that case. I have no recollection of appearing in the case. I was a witness before Judge Cole in several cases.

The COURT: But in this case?

The WITNESS: No; I have no recollection of appearing before Judge Cole in this case. I may have, but the matter was of such unimportance to me that it made no impression upon my memory.

By Mr. DUVALL:

Q. Now, let me see your books, the accounts, please—your records showing these visits. A. I have no books. I told you a while ago I did not have any books.

94 Q. I asked you at recess to bring them. A. I did not hear any such request.

Q. Will you bring them tomorrow morning? You were asked to bring your books at the last trial, were you not? A. I was not—no, sir. I was asked if I had a record or if I had my books.

Q. I ask you to bring them now. Will you bring them tomorrow morning? A. Certainly.

Q. Doctor, when did you receive your degree and authority to practice medicine? A. In 1889.

Q. When did you open up an office for the practice of medicine? A. 1889.

Q. During that year and for how many other subsequent years were you employed in the District service? A. I remained there until the spring of 1895.

Q. So that from 1889 to the spring of 1895 you were employed in the station-house? A. Yes, sir.

Q. What were your hours there? A. I went there usually at half past eight or nine o'clock in the morning, or ten or half past ten, sometimes as late as eleven, and then I returned at half past three or four in the evening for an hour or so.

Q. And you were practicing your profession in addition to that? A. Yes.

Q. You were practicing before you graduated? A. Well, I was studying under two physicians.

95 Q. You were practicing before you graduated in medicine? A. Yes; in a sense I was; yes.

Q. For how many years were you practicing before you graduated? A. Between four and five years.

Mr. DUVALL: That is all, Doctor.

Redirect examination.

By Mr. DOUGLASS:

Q. When did you say you graduated? A. 1889.

Q. Where? A. National university, in this city.

Q. You say in a sense you were practicing before you graduated. In what sense? A. Studying under preceptors; under Doctor William H. Taylor and another doctor.

Q. You were simply studying under preceptors? A. Yes, sir.

Q. Were you practicing medicine for hire or anything of that sort? A. No, sir.

Q. You were not making money out of it? A. No, sir; I had the privilege of clinical study with them, going about to visit patients with them.

Q. You were simply their assistant? A. Yes, sir.

Q. And made no charges for your services? A. No, sir.

96 Q. None whatever? A. No; merely the opportunity of perfecting myself.

Q. So that is what you meant by saying you had practiced, in a sense? A. Yes.

Q. And since 1895 you have been devoting yourself exclusively to your profession? A. Yes, sir.

Q. A good many questions have been asked you about that blow on the head that Mrs. Roth received. Can you state positively whether or not she entirely recovered from that? A. She completely recovered from that.

Q. Had she completely recovered from it some years before this stable was erected? A. Well, she recovered entirely in the course of three or four months. That was 1889.

Q. And before the end of 1889 she was completely recovered? A. Yes, sir.

Q. And you did not treat her again for any serious ailments until after the stable was erected? A. Some time in 1893, when she began to make frequent visits.

Q. Did she begin to make those frequent visits before or after the stable was completed? A. It was after the stable was completed, because it was in 1893.

Q. The stable was commenced in 1892 and completed in the spring of 1893? A. In the winter of 1892-1893, I think.

97 Q. Will you state again whether she was at all sick or not, or whether she was entirely in good health prior to the erection of this stable?

Mr. DUVALL: I object; he has no right to state it over again.

By Mr. DOUGLASS:

Q. I will put it this way: After what Mr. Duvall has asked you on cross-examination about her ailments prior to the spring of 1893, will you state to the jury whether or not she was in sound health prior to the completion of this stable, in 1892-1893? A. Yes; she was in sound, good, excellent health, considering her years.

Q. Now, in reference to what you have said about chronic dyspepsia and stomach troubles and nervousness and nausea, were those symptoms and those diseases you have referred to before or after the completion of the ambulance stable? A. Before the year 1893 I rarely saw her and what ailments I treated her for were of a very slight character. It was subsequent to that she made frequent visits.

Q. And were those visits subsequent to the erection of the stables or prior thereto? A. Subsequent.

Q. Are you certain about that? A. Yes, sir.

Q. Did her visits, year by year, increase or decrease since then?

Mr. DUVALL: He has been all over that in chief, your honor.

Mr. DOUGLASS: I withdraw it.

98 By Mr. DOUGLASS:

Q. You were asked on cross-examination if you did not advise Mrs. Roth to leave her house? A. Yes, sir.

Q. When did you advise her to leave? A. I have advised her repeatedly to leave.

Q. When? A. For the past four or five years.

Q. Why did you advise her to leave? A. Because the condition of the house where she lived was such that it was not fit for a human habitation.

Q. Why do you say it was not fit for a human habitation? A. Well, because of the odor and smell about there, and she was constantly and persistently complaining of inability to sleep and loss of rest. She was growing gradually more nervous and sick.

Q. Did she leave? A. No.

Q. Do you know why she did not leave?

Mr. DUVALL: Objection.

Mr. DOUGLASS: I submit it is perfectly competent. Counsel certainly asked the question for some purpose, deeming it to be relevant to the purposes of this case, and if it is brought out on cross-examination that this plaintiff was advised to leave that house and did not leave, it is competent for us to show in rebuttal by the witness, and in direct reply to the cross-examination, why she did not leave, if this witness knows.

The COURT: What was said why she did not leave I do not think could be given as evidence by this witness.

99 Mr. DOUGLASS: It is a part of the very transaction, if your honor please, out of which this advice grew and in the very conversation in which he gave the advice.

The COURT: If you can give any circumstance existing at that time, she herself would be a competent witness upon that point.

By Mr. DOUGLASS:

Q. Do you know of facts or circumstances that made it impracticable or impossible for her to leave? A. None other than what I saw about the premises at the times of my visits and her sleeplessness.

Q. What did you see about the premises and about her condition that would enable you to tell? A. The place was filthy; there were foul odors about.

Q. That is not the question, Doctor. Do you know of any facts that would throw any light upon the question as to whether she was able to leave or not? A. I only know that she had not been able to pay me anything on her bill, if that is what you refer to.

Mr. DUVALL: We object to that.

The COURT: I think he can testify as to her pecuniary condition; how far she was able to leave the property there and go some other place—provide another home.

By Mr. DOUGLASS:

Q. Do you know from your knowledge of her financial condition whether she was able to leave or not—able to provide another home? A. I have no knowledge of her financial condition other than what she told me, and that——

Q. We do not want that; I will not question you any further. You do not know of your own knowledge, then? A. No.

(Witness excused.)

And thereupon, to further maintain the issues on her part joined, the plaintiff produced as a witness one J. B. DOWNEY, who, being duly sworn, gave evidence tending to show that he was the superintendent of W. F. Downey's livery stables in the city of Washington, D. C., and had been engaged in that business constantly for about twelve years.

The witness was thereupon asked the following question:

Q. What methods do you use to prevent bad odors and stench in and about a stable?

To which counsel for the defendant objected; whereupon Mr. Leckie, for the plaintiff, stated: I will put the question in this way: What is the proper method to prevent bad odors in and about a stable?

Mr. BRANDENBURG: I submit that this is not a subject for expert testimony at all, and that it is not competent for the witness to be allowed to state his opinion to the jury. The question as to whether the ambulance stable was properly conducted is one which the jury can determine upon a statement of the facts. I object to the witness being allowed to testify as an expert.

But the court overruled said objection; to which ruling counsel for the defendant then and there excepted.

Thereupon, subject to the foregoing objection and exception, said witness testified as follows:

That the manure should be hastily removed from stables, and that disinfectants should be constantly used; that lime should be sprinkled about in the stable, or diluted acids—carbolic acid; that it is often necessary to use disinfectants several times during the day; that the odors are increased if the

manure is allowed to collect for a week or ten days at a time; that the absence of disinfectants at such times would create a nuisance; that where horses are allowed to stand on the ordinary stable flooring, urinous matter, if allowed to remain, becomes very offensive; that the odors are very fragrant, so to speak, and "our method is to remove it constantly, either by washing out the drains and disinfecting either with lime or with acids;" that disinfectants should be used in the stable as well as in the manure pit, and before and after the manure is removed; that during the removal the raising of the manure lets off the gas and steam, which will permeate the whole neighborhood, and if the ground is then allowed to remain without being disinfected in any way it will be very offensive; that there is a rapid decay if the manure is allowed to remain and become soaked with water for any length of time.

Q. Have you had an opportunity in the course of your business to notice how long odors from a stable will remain in clothing?

The COURT: Or any other texture, I suppose you mean?

Mr. LECKIE: Yes, sir; I will change it to cotton or woolen goods.

To which question counsel for the defendant specially objected, because the matter inquired about had no relation to any matter for which a recovery was legally claimed or could be claimed in this action; which objection the court overruled; to which action the defendant, by its counsel, then and there excepted.

102 A. Yes, sir; I have.

Q. Now you may answer it. How long are odors likely to remain?

To which question counsel for the defendant objected for the reasons above stated; but the court overruled said objection; whereupon defendant, by its counsel, then and there duly excepted.

The COURT: I understand you object to all of the testimony of the witness.

And thereupon the witness answered said question as follows:

A. Clothing, such as livery goods, that have been exposed to the odors of the stable, when taken out and exposed to the air, will retain the odors for days afterwards. If allowed to be enclosed in a closet they will remain until removed, no matter what the length of time should be. The clothing would still retain the odors. Take a carriage, for instance, the lining of which has been permeated with stable odors, and a lady riding in that carriage will have her clothing tainted with it, even though the carriage has been removed from the stable for several days.

Q. Is that true as to cotton and woolen goods as well as to silks?

A. I should say it applied to any class of goods. I don't know what improvements have been made in that direction.

Q. Mr. Downey, in your line of business, is there any method or means known which will prevent the congregation of rats in
103 and about a stable? A. Yes, sir.

Q. Tell us about it. A. Well, concrete flooring, where the presence of rats is already noted.

Q. Where would you use this concrete? A. Wherever required.

Q. Does that mean the entire stable floor? A. Yes, sir.

Q. Including the stalls? A. Yes, sir.

Q. And can you prevent the congregation of stable flies in any way; and, if so, tell us about it? A. Strict cleanliness will prevent the congregation of flies.

The witness on cross-examination testified as follows:

Q. Are you familiar with the conduct of other stables besides your own? A. Yes, sir.

Q. Do you know of any stables where the means stated by you are resorted to for the prevention of odors and rats and flies? A. Yes, sir.

Q. Aside from your own? A. Yes, sir.

Q. What proportion of stables with which you are familiar resort to those methods? I want to know what is the general method of conducting a livery stable—what they resort to?

Mr. DOUGLASS: I submit the question, unless modified, is not competent. You might ask what is the general method of
104 well-regulated stables.

Mr. BRANDENBURG: I have no objection to the amendment. I only wanted to find out generally what that method is.

Mr. DOUGLASS: Suppose you put it in the question.

Mr. BRANDENBURG: I will say well-regulated stables.

The WITNESS: Will you repeat that?

Q. I wish to know whether the methods of your stable for the removal of odors and the accumulation of rats and flies are ordinarily used in a well-regulated stable? A. In well-regulated stables, yes, sir.

And thereupon the plaintiff, to further maintain and prove the issues on her part joined, produced as a witness one MOSES SINSEIMER, who, being duly sworn, gave evidence tending to show that he was a livery-stable keeper in the city of Washington, and had been engaged in business as such for twenty-four years; that he has made a study as to the methods of conducting livery stables.

Whereupon the witness was asked the following question:

Q. You may tell the court and jury what methods are employed in well-regulated stables to prevent offensive odors from permeating the air all round that neighborhood?

To which question counsel for the defendant objected on the ground that this was not a question calling for expert testimony, in that it does not require any peculiar knowledge or study, beyond that presumably open to the ordinary mind, to determine, and because the witness has shown no qualification as an expert in respect
of such a stable as that described in the testimony; but the
105 court overruled said exception; to which action the defendant, by its counsel, then and there excepted.

Subject to this objection and exception, the witness was allowed to answer said question as follows:

A. The main part of keeping a stable clean is to have the stable washed out once or twice a week, and have the manure removed daily and use disinfectants.

Subject to the said objection and exception, the witness further testified that disinfectants should be used every day; that they should be sprinkled all through the stables and behind the horses; that if disinfectants are not used, the smell is awfully bad; that if the manure is not removed from the pit for a week or ten days, the smell becomes very strong and unhealthy for horses, as well as human beings; that the stench is sickening, and the manure becomes rotten; that the droppings from horses should be removed as soon as they fall; that he has noticed how long odors remain in clothing; that it would take four or five days to get it out; that odors will remain in clothing longer if the clothing is kept in the house.

Q. Once clothing—any kind of clothing—if it is once saturated with this odor and it remains inside of a house, how long would it retain that odor?

To which counsel for the defendant specially objected, because the matter inquired about had no relation to any matter for which a recovery was legally claimed or could be claimed in this action; which objection the court overruled, and the defendant thereupon, by its counsel, duly excepted.

106 Whereupon the witness answered said question as follows:

A. Why, while the goods or clothing was in the stable it would stay there all the time.

The witness further testified, subject to the foregoing objection and exception, that in order to keep a stable free from rats there should be a dog or cat in the stable, and that the stable should be concreted; that it is absolutely necessary to take such precautions in order to prevent rats from congregating around a livery stable; that if a stable is kept clean, naturally it will not draw many flies.

The witness was thereupon asked the following question:

Q. What makes maggots on manure pits, if you know?

To which question counsel for the defendant objected on the ground that it is not a question calling for the opinion of an expert and because the qualifications of the witness to testify on the subject had not been shown. Whereupon the court said: I understand the counsel on the other side to say that they offer it as merely reflecting on the care with which the stable was kept; but this objection the court overruled; to which the defendant, by its counsel, then and there excepted.

Subject to the said objection and exception, the witness answered said question as follows:

A. Why, if you leave the manure lay for several days you will find a whole lot of maggots there, and flies get into it, and the maggots get thick.

107 Subject to objection and exception by defendant, the witness further testified that the presence of a large quantity of maggots would show that the manure had lain there for a long time.

And thereupon the plaintiff, to further prove the issues on her part joined, offered as a witness one W. G. H. CLARKSON, who, being duly sworn, testified that he was the foreman of the Mount Vernon livery stable; that he had been engaged as such for about three years.

He was thereupon asked the following question:

Q. Tell us, if you know, what methods are used in well-regulated livery stables to prevent odors from emanating therefrom.

To which question counsel for the defendant objected on the ground that the subject of the inquiry is not a matter calling for expert testimony, but one of common knowledge, upon which the ordinary mind is capable of forming a judgment. The question was further objected to because the qualifications of the witness to testify as an expert concerning the matter at issue had not been shown; which objection the court overruled; to which action the defendant, by its counsel, then and there excepted.

Subject to the said objection and exception, the question was answered by the witness as follows:

A. Keeping a stable clean.

Q. What do you mean by that? A. To see that it is well washed out.

Q. How frequently should it be washed out? A. Once or twice or three times a week. It depends upon the weather—whenever it is necessary.

108 Subject to the foregoing objection and exception, the witness further testified that in order to prevent odors disinfectants should be used frequently; that the manure should be removed daily; when manure is allowed to remain for as long a period as a week the stench is very bad; this stench is caused by the heating of the manure; it rots; that clothing kept in a stable becomes saturated with odors, but when taken into the open air it will disappear; that in order to prevent the congregation of rats a granolithic floor should be used over the whole surface; that there must be no hiding places for rats; that cleanliness will prevent the congregation of flies. The witness further testified that he lived in the neighborhood of the ambulance stable in question—about 80 feet away; that the odors coming therefrom were very disagreeable; that he visited Mrs. Roth's residence from time to time; that he frequently went to Mrs. Roth's store, a little grocery and variety store; that she gave up the business some time after the completion of the ambulance stable.

The witness was thereupon asked the following question:-

Q. Prior to the erection of the stable did you have occasion to observe what kind of a business Mrs. Roth was doing? A. Yes, sir.

Q. Did you have occasion to call there frequently? A. Well, not frequently. I would go there occasionally to buy some small things and would send the children there.

Q. What kind of a business did she have after the erection of the stable.

109 To which question counsel for the defendant then and there objected on the ground that the question called for an

opinion as to a matter not the subject of such testimony, because the qualification of the witness was not shown, and because the witness should be required to state the facts, from which the jury could determine the character and kind of business; which objection the court overruled; to which action the defendant, by its counsel, then and there duly excepted.

Subject to said objection and exception, the witness was examined and testified as follows:

Q. What kind of a business, then, did she have before the erection of the ambulance stable?

To which question defendant's counsel objected for the reasons just stated in their objection to the preceding question; which objection was overruled; whereupon the defendant, by its counsel, duly excepted.

A. She had a right good little business there.

Q. What kind of business did she conduct after the stable was erected?

Which question was objected to by counsel for the defendant for the reasons given for their objection to the preceding question; the court overruled said objection; to which ruling the defendant, by its counsel, excepted.

A. The business decreased.

Q. Do you know any reason for the decrease of that business?

A. I know the reason my little trade stopped.

The witness, on cross-examination, testified that he is the foreman of a livery stable, and that seventy horses are kept there; that he has had no experience with a stable where eight or ten horses are or were kept.

110

Defense.

And thereupon the defendant, to maintain and prove the issue on its part joined, offered evidence tending to show that the stable in question was carefully and properly constructed; that the wall separating the said stable from the premises of the said plaintiff was placed two and one-half or three feet below the surface of the ground and was carefully constructed; that the stable, including the stalls, was flushed out with water as often as the employees could find the time to do so, and that sometimes the stable was so flushed once every week or ten days, although there was no regular time at which this was done; that occasionally lime was sprinkled in the stalls; that wooden floors were placed in the stalls for the horses to stand upon, and that underneath the wooden floors was a concrete foundation; that said wooden floors were made of thick plank and were fastened down, and that when the stalls were flushed the plank floors were not removed or their position in any way changed; that the manure, both from the ambulance and patrol stables, was piled in the northwest corner of the premises of the defendant, upon which the ambulance stable was located, and immediately adjoining the premises of the plaintiff, opposite to a wooden house on plaintiff's

lot; that sometimes the manure was removed as often as two or three times a week; at other times once a week—sometimes in ten days; that generally it was removed about once a week; that there was no provision made for the removal of the manure, and that the employees at the ambulance stable sold the manure, and sometimes gave it away to farmers and other private individuals who might want it, and that when money was obtained for it, the same was divided between the said employees; that the odors were at times bad; especially at the time of
111 the removal of it; that lime was never sprinkled upon the manure pile itself, but was generally sprinkled on the ground at the bottom of the pit after the manure was removed; that no other disinfectant was used either at the place where the manure was kept or in the stalls; that there were no rats upon the premises of the defendant, and that there was no place about the said stable for them to congregate except in the loft, where the hay and the feed bins were kept; that there were rats in great numbers upon the premises of the plaintiff before the erection of the said ambulance stable, and that places in her house had been burrowed by them before the stable was built; that the plaintiff kept an uncleanly house and premises, and that this condition accounted for the rats and in part for the odors of which she complained; that the ambulance stable was as well, if not better, kept than any of the other stables belonging to the defendant.

Counsel for the defendant thereupon offered in evidence the declaration and proceedings in the case of Catherine Roth against The District of Columbia, at law, No. 34262, filed May 26, 1893.

Mr. DOUGLASS: We object to the introduction of that old case on the ground that it is wholly irrelevant to the issues of this case and has no bearing upon and cannot determine to any extent the issues hereof. We object to it upon that ground, and would like to know upon what ground it is offered.

Mr. BRANDENBURG: I offer in evidence the proceedings in the case No. 34262, Roth against The District of Columbia, filed
112 on May 26th, 1893, in which there was a trial on February 10th, 1896, and a verdict of two hundred dollars for the plaintiff, and a remittitur of one hundred dollars by direction of the court, and a payment of that amount to the plaintiff. I offer it upon several grounds: One, and that, of course, relates to the effect of the offer, and which will be presented in the instructions we will ask the court to give the jury, as to whether this bars the plaintiff from any recovery for damage to her property or herself; and, secondly, upon the ground that it bears upon the question of damages in this case in this way: There are in this declaration certain damages alleged to the plaintiff's property and her business, and to the loss of rental value of her property occurring at the date this declaration was filed. We offer that upon the question as to what injuries actually existed and what damages had been done prior to the institution of the suit, which would, of course, negative the idea

that certain of these damages had been done during the time covered by the declaration in this suit. Your honor might read it over and pass on it without reading it to the jury.

Mr. DOUGLASS: We would like to say in this connection that the ground for objection is twofold, because it is offered for a twofold purpose, and it is inadmissible on both grounds:

The first is that it is not a bar to a recovery in this case, and it is not admissible for that purpose. Your honor will note that by the terms of the declaration in this case we are suing for damages to Mrs. Roth's health and property and business, or rather her business from the 24th of February, 1894, to the 24th of February, 1897, and we are basing the suit upon the ground that during that space of
 113 time the defendant negligently and carelessly operated and conducted a stable and produced a threefold nuisance, about which we have heard so much in the testimony of the witnesses.

Surely it will not be contended here that for any damage subsequent to the 24th of February, 1894, she is not entitled to recovery; that she is not entitled to recover for any damage which may have accrued to her since that date. This suit was determined in May, 1893, and there could have been no recovery for anything since that time, and now we say that after nearly one year, leaving an interim of nearly one year, or from the 24th of February, 1894, to the 24th of February, 1897, damages have resulted.

So we object to it on both grounds offered by the counsel for the District.

The court sustained said objection; whereupon counsel for the defendant duly noted an exception to the ruling of the court.

The said declaration and proceedings are as follows:

114 In the Supreme Court of the District of Columbia.

Filed May 26, 1893.

CATHERINE ROTH	} No. 34262.
vs.	
DISTRICT OF COLUMBIA.	

First Count.

The plaintiff sues the defendant, a municipal corporation duly created, for this: that the said plaintiff, Catherine Roth, before and at the time of committing of the grievances hereinafter mentioned, was and from thence hitherto hath been and still is lawfully possessed of a certain piece of real estate, with the appurtenances thereto attached, situate, lying, and being in the city of Washington, District of Columbia, and known and designated on the ground plan or plat of said city as part of lot No. eleven (11), square No. four hundred and eighty-one (481), on 5th street between M and N N. W., and upon said real estate there is erected a certain dwelling and outhouses, the property of the plaintiff, as aforesaid, and in which

said dwelling-house the plaintiff has for and during a long period resided and dwelt and in the same does reside and dwell. Nevertheless the said defendant, contriving and wrongfully and unjustly intending to injure, prejudice, and aggrieve said plaintiff in the said possession, use, occupation, and enjoyment of her said real estate and the buildings thereon erected, as aforesaid, and to render the same incommodious, unfit for habitation, and of little
115 or no use or value to the said plaintiff, whilst the plaintiff was so possessed thereof, and so resided and dwelt, as aforesaid, did, to wit, on the 15th day of October, 1892, through its agents and employees, commenced the erection and building of a certain structure known and designated as a station-house stable, and completed the erection of the same, to wit, on the 15th day of April, 1893, near to and adjoining the said real estate of the plaintiff, in so careless, negligent, and improper a manner, that by reason thereof, afterwards, to wit, between the periods aforesaid, before commencement of this suit, divers large quantities of rain water fell and flowed upon, against, and into the building of the said plaintiff and the walls, roofs, papering, floor, and other parts of said building, and thereby weakened, injured, wetted, and damaged the said building and the wall, ceiling, papering, floors, and other parts thereof, and by reason of the premises the said building of the said plaintiff became and was and is damp, incommodious, and less fit for habitation, and also by reason of the premises certain lodgers who were with the plaintiff and who occupied certain parts of said building before the committing of said grievances, paying a certain rent and profit therefor to the said plaintiff, from the time of committing the said grievances have ceased to reside or lodge in said building, as lodgers or otherwise, which, but for said grievances, they would have done, and also by reason of the said premises and carelessness and negligence of the defendant, through its said employés and agents, a certain private alleyway leading from the said 5th street along the length of the said building of said plaintiff and between
116 the said stable of the said defendant and building of the plaintiff to the back yard in the rear of said building has been greatly narrowed, to wit, to the extent of nine inches and one-half, and the pavement upon the same has been torn up, thereby greatly disfiguring the same and greatly damaging the same as a passageway; and also by reason of the premises that part of the real estate known as the back yard in the rear of the said building of the plaintiff has been greatly disfigured by reason of the carelessness and negligence of the defendant, through its agents and employés, as aforesaid, during the periods aforesaid, by reason of their leaving holes in which water collect- and mounds of earth upon various parts thereof and debries from the erection of the said stable, and otherwise damaging the same; and also by reason of the premises the plaintiff has been greatly injured by the defendant, during the periods aforesaid, by reason of the careless and negligent manner in which its servants and employés remove-, handle-, and left certain outbuildings and lattice-work, and grape vines and sh-ub-

bery, and other things of ornament and use upon said premises, and cut off the water for the period of three months of certain outhouses upon said premises; and also by reason of the premises, by the carelessness and negligence of the defendants, through its agents and employes, the approach of the plaintiff's store and place of business in her said dwelling-house was greatly and unnecessarily obstructed, so as to prevent her patrons, during the periods aforesaid, and other persons from having free access to the same and from trading with her as otherwise they would have done.

And the plaintiff says that by reason of the premises and injuries aforesaid she has been damaged in the sum of two thousand
117 five hundred dollars (\$2,500), and she claims the said sum of two thousand five hundred dollars, besides the costs of this suit.

Second Count.

For her further cause of action the plaintiff, Catherine Roth, sues the defendant, The District of Columbia, a municipal corporation duly created, for this, that whereas the said plaintiff, before and at the time of committing of the grievances of the said defendant, as hereinafter mentioned, was and from thence hitherto hath been and still is possessed of a certain piece or parcel of real estate, with a dwelling-house and other outhouses thereon erected, situate, lying, and being in the city of Washington, District of Columbia, on 5th street between M and N N. W., being known and designated on the ground plan or plat of said city as part of lot No. 11 and square 481, and the said dwelling No. — 5th street is occupied as a place of residence by the plaintiff, and certain parts of the same were rented to certain lodgers, from whom she received certain sums of money for lodging furnished them, and another part of said dwelling-house was used as a place of business by the plaintiff, her said business being that of a grocer for a long period of time, to wit, for the period of two years continuously, and is still so used;

And whereas also the said defendant before and at the time of the committing of the grievances hereinafter next mentioned was and from thence hitherto hath been and still is possessed of a certain piece or parcel of ground contiguous and near to the said real estate of the said plaintiff in the city of Washington aforesaid, nevertheless the said defendant, contriving and intending to injure, prejudice, and aggrieve the said plaintiff and to incommode
118 and annoy her and her said lodgers in the possession, occupation, and her enjoyment of her said dwelling-house and her said real estate, hitherto, to -it, on the 15th day of October, 1892, commenced to build and erect a certain structure known and designated as a station-house stable, and on the 15th day of October, 1892, wrongfully and injuriously completed the same on the said piece or parcel of ground of the said defendant so being contiguous and near to the said house and premises of the said plaintiff aforesaid, and ever since and wrongfully and injuriously kept and continued and caused to be kept and continued the said stable so

erected, as aforesaid, and since the erection and completion of the said stable, as aforesaid, the same has been used by the defendant as a place for keeping horses, and also wagons, carriages, and vehicles of various kinds, and has caused a large — of persons, as the defendant- employés and servants, to collect in and about said stable for the performance of such duties as the defendant may require of them in attending to said horses and driving the said wagons; that the said wagons are used for the transportation of arrested criminals and other persons liable to be filthy in person and infected with loathsome disease; by means of which several premises, divers loud noises, kicking of horse hoofs, rattling of wagons, offensive vapors, fumes, smells, and stench since the erection and occupancy of the said stable aforesaid rose, issued, and proceeded from the said stable and entered into and spread and diffused themselves over and upon, into and through, and about the said dwelling-house and the premises of the said plaintiff, and the air over, through, and about the same was

thereby greatly filled and impregnated with the noxious and
 119 offensive fumes, smells, and stench, and was rendered and became and was and still is offensive, unhealthy, and uncomfortable, and the said plaintiff has thereby been and still is greatly annoyed and incommoded in the use, possession, occupation, and enjoyment of the said dwelling-house and premises, and the value of the same has been greatly diminished, and the plaintiff has thereby been and still is greatly annoyed, and by the committing of the grievances aforesaid by the defendant, as aforesaid, greatly injured and damaged, to wit, in the sum of two thousand five hundred dollars, and she claims the said sum of \$2,500 besides the costs of this suit.

And the plaintiff claims that by reason of the two causes of action set forth in the first and second counts of this declaration she has been damaged in the sum of five thousand dollars, and she claims the sum of \$5,000, besides the costs of this suit.

JAMES McD. CARRINGTON,
 CAMPBELL CARRINGTON,

Attorneys for Plaintiff.

The defendant is to plead hereto on or before the first day of the first special term of the court occurring twenty days after service hereof; otherwise judgment.

JAMES McD. CARRINGTON,
 CAMPBELL CARRINGTON,

Attorneys for Plaintiff.

120 In the Supreme Court of the District of Columbia.

CATHERINE ROTH

vs.

THE DISTRICT OF COLUMBIA.

} No. 34262. At Law. Docket No.
 } 38. Damages, \$5,000.00.

1893.

May 26. Declaration, &c., filed.

Sept. 9. Plea of N. G. filed.

1895.

April 24. Joinder and note of issue and case calendared.

1896.

Nov. 9. Jury sworn ; sealed verdict ordered.

Nov. 10. Verdict for plaintiff for \$200.00.

Nov. 14. Motion for new trial.

Dec. 23. New trial granted unless plaintiff remit \$100 within 5 days.

Dec. 28. Remittitur of \$100 of verdict.

Dec. 28. Judgment on verdict.

1897.

Aug. 3. Judgment entered "satisfied."

121 And thereupon, upon all of the evidence hereinbefore set forth and which is hereby referred to and made part hereof, the defendant prayed the court to instruct the jury as follows :

No. 13. They jury are further instructed that there can be no recovery in this action for any injury to the plaintiff's business, or to her property, or in the loss of rentals thereof, which they believe, from the evidence, was caused or suffered prior to the 9th day of November, 1896. (Refused.)

No. 14. The jury are instructed that there can be no recovery in this action because of loss of rental value of plaintiff's property, or any part thereof, or for loss of profits in the conduct of her business, or for injury to her person or property resulting from the offensive odors, fumes, smells, and stenches, if any, generated upon the premises of the defendant, or rats or flies proceeding therefrom at any time prior to the 9th day of November, 1896. (Refused.)

To the ruling of the court in refusing to grant the two said instructions the defendant, by its counsel, then and there duly excepted, and said exception was duly noted upon the minutes of the court.

Divers prayers both on behalf of the plaintiff and defendant were granted by the court, all of which are embodied in the general instruction to the jury, as follows :

122 GENTLEMEN OF THE JURY: Catherine Roth brings her action against the District of Columbia, which is the defendant in this action, Catherine Roth being the plaintiff. The declaration in the case is quite lengthy, containing three counts, in which much of the matter is repeated in the second and third that is contained in the first. It is only necessary that I should state to you substantially, in as plain language as possible, what the action is brought for, without reading the formal declaration which has been filed. You will have the declaration with you in your retirement and can read it as you desire.

In the first part of the declaration she complains and says that she is the owner of part of lot numbered 11, in square 481, on Fifth street between M and N streets northwest, and that *that* she resides in that house, makes it her residence, and says that she occupied the front room in the house, the lower front room, as a store for the sale of goods she had there. She says that the defendant erected what

is called here the station stable on an adjoining lot, close to her premises and abutting upon them, and she avers that the building of the station-house was occupied by divers men and horses, and that she was annoyed by the kicking of the horses and by the noises made by the men in conversation, etc.; and not only that, but she avers that the premises were not cleanly, but that she suffered from noisome odors and smells which arose on the lot of the defendant and were carried into her premises, and from which she suffered in her health and comfort seriously. She also avers that the defendant so kept the premises that large swarms of flies and rats collected there, and from there proceeded into her premises and became a great nuisance to her, and especially the rats, they being very inju-
123 rious to her property, and also from their annoyance and presence in her premises seriously injured her comfort and health. She says that these smells came into her house and store, and that smells arising from the rats permeated her goods, and she was compelled to abandon the business she was carrying on there, and thereby suffered material loss and damage.

For the matters set forth in the first count she asks for damages in the sum of \$2,500.00.

In the second count she complains more especially of the loss of the rental value of her property, portions of which she had been accustomed to rent, let, and lease to other parties, but for which, owing to the presence of these noisome and unhealthy smells, she was unable to obtain tenants, and thereby lost the use of portion of the house she was in the habit of renting to other parties during a certain period of time mentioned. I might as well say to you that the time laid in the declaration is from the 10th of February, 1894, to the 8th of February, 1897, and that these losses for which she claims damages all occurred and accrued to her during that time and in consequence of the presence of these noisome smells, and the presence of rats and flies, and the noises from the horses, kicking horses, and from men, their conversation—it all occurred during that time. You have nothing to do if evidence should be produced to show the existence of any such thing after the eight- of February, 1897, or before the tenth day of February, 1894, because that time
is not embraced in this action.

124 The third count seems to embrace very much the same matter as the first and second counts. How does that differ in the claim of damages, Mr. Douglass?

Mr. DOUGLAS: Have you the original or the amended declaration?

The COURT: I have the original.

Mr. DOUGLAS: The first declaration does not charge negligence at all, but the amended declaration charges negligence in all its counts. We had better hand this to your honor.

(The amended declaration was here handed to the court.)

The COURT: This is the amended declaration?

Mr. DOUGLAS: Yes, sir; that is the right one.

The COURT (to the jury): The amended declaration has some

very material features which were not in the original, which I inadvertently got hold of, and it seems to be different in its verbiage from what I thought it was. These averments which I have mentioned to you on the part of the plaintiff in the amended declaration charge that all these things were done negligently, that the parties negligently built the stable, took improper precautions against rats; it charges that the premises were not kept properly, but negligently permitted to become foul, and that they negligently permitted foul odors to generate and to permeate the atmosphere, and that they necessarily came on the premises of the plaintiff adjoining to the premises where the stable was built, and that rats were

permitted upon the premises of the defendant—a large number of rats were negligently permitted to harbor and assemble on the premises of the defendant, and that they came into the property of the plaintiff and injured and destroyed her property by gnawing holes through the floors and ceilings, and by increasing the odors in her premises made the atmosphere unhealthy, the premises unhealthy to occupy, and injured her health. All these matters are distinctly set forth in the amended declaration, and to all of these the defendant pleads not guilty, which is a denial of every material fact in the amended declaration. The effect of that is that it places on the plaintiff the burden of proving the facts set forth in the declaration necessary to be proved in order to enable you to return a verdict for the plaintiff. The plaintiff must establish all these facts by a preponderance of the evidence, and when we say “preponderance of evidence” we mean not any particular amount of evidence more on the plaintiff’s side than on the defendant’s, but we mean that there must be some amount, something to turn the scale in favor of the plaintiff which the jury can appreciate, and from which they can, as a matter of judgment, come to the conclusion that the plaintiff has established the material facts set forth in the declaration by a preponderance of the evidence, by evidence which, upon the whole, has more weight than the evidence to the contrary. Of course that conclusion as to all the facts, in order to enable the plaintiff to recover, must be from an examination and consideration of all the testimony in the case, and if from the consideration of all that testimony you conclude that the preponderance is in favor of the plaintiff it will be your duty to return a verdict for the plaintiff; but if, on the other hand, the plaintiff

has failed to establish the material facts set forth in the declaration necessary to be proved under the instruction of the court by a preponderance of the evidence—if the plaintiff has failed to do this—then the plaintiff must fail in her case, and it will be your duty to return a verdict for the defendant.

The parties in this case have requested the court to give in charge a number of prayers, charges respectively upon each side of the question, and, making some modifications in some instances, there are a number of these prayers which I propose to give to the jury. They are so extensive as to, to a great extent, take away from me the burden of the labor of giving you an independent charge irre-

spective of any request of either of the parties. For convenience sake I shall call these prayers by the numbers and in the order in which they are numbered, designating them as being the plaintiff's or the defendant's as the case may be.

The eight prayers of the plaintiff are as follows, and, as modified by the court and as read by the court to you, I give to you as being the law :

1. A stable is a nuisance when it is so negligently kept or used so as to substantially disturb the comfort of owners and occupants of adjacent premises or as to seriously impair their health or the value of their property, and the jury are instructed that if they find by the preponderance of the evidence that the defendant's ambulance stable and premises were in such poor sanitary condition or so negligently kept or used that they substantially disturbed the plaintiff's
127 comfort or seriously impaired her health or materially injured her business or the rental value of her property, then their verdict should be for the plaintiff.

2. If the jury should find from the preponderance of the evidence that defendant's stables and premises were so negligently kept or used that noisome odors, stench, and smells emanated from said stable and premises and permeated the plaintiff's dwelling-house, place of business, or premises to such an extent as to materially impair the desirability of plaintiff's said house and premises as a residence and place of business or in anywise seriously affected their fitness for habitation or place of business, then their verdict should be for the plaintiff.

3. If the jury should find from the evidence that there were noises, noisome odors, stench, or smells about the defendant's stable and premises, and that noises, odors, stench, or smells could have been avoided by the defendant by the exercise of reasonable care, and they were not so avoided, and the plaintiff was seriously disturbed and annoyed thereby in the enjoyment of her house and premises, then their verdict should be for the plaintiff.

4. If the jury should find from the preponderance of the evidence that defendant's stables and premises were so negligently kept, managed, and used that in consequence thereof noises were occasioned by kicking and stamping of horses, and that said noises were so ill-timed, loud, and disturbing as to materially interfere with the comfortable existence of the plaintiff in her house and premises or substantially affect her rest and quiet or to otherwise substantially injure her health, their verdict should be for the plaintiff.

128 5. If the jury should find from the evidence that defendant's stable and premises were so negligently kept or used as to cause swarms of flies to collect therein and thereupon, and that said flies came upon and infested plaintiff's house and premises to such an extent as to substantially annoy, disturb, and injure her in her business and health and enjoyment of her house, then their verdict should be for the plaintiff.

6. If the jury should find from the evidence that the defendant's

stables and premises were so negligently kept or used as to cause large numbers of rats to collect therein, thereupon, or thereabouts, and that in consequence thereof the said rats infested the plaintiff's premises and house to such an extent as to substantially annoy or substantially disturb, or substantially injure her in the enjoyment of her home or health or to cause substantial injury to or destruction of her business alleged to have been conducted upon said premises, then their verdict should be for the plaintiff.

In considering the question of alleged injury to the plaintiff from this cause, if the jury shall find from the evidence that this cause existed during the period of time covered by the declaration, the jury is instructed to take into consideration all the evidence submitted as to the number of rats, the destruction that may have been done by gnawing and cutting the walls of the plaintiff's house, her furniture, and other articles of property belonging to her and upon her said premises, and also any serious injury that she may have suffered in her health or to her property or to her business by reason

129 of odors that may have been created or disseminated by said rats. (The court here directed the clerk to read the instructions to the jury.)

7. If the jury should find from the evidence that the plaintiff was, during the period of time covered by the declaration, materially injured in her health by reason and in consequence of an improper and negligent conduct and operation of said ambulance stable and premises by the defendant, then their verdict should be for the plaintiff.

8. If upon the whole case the jury shall find that the plaintiff is entitled to recover, there are three elements of damage claimed by the plaintiff and set out in the three several counts of her declaration :

In estimating damages for injuries to the plaintiff's health during the period covered by the declaration, the jury will take into consideration the suffering of the plaintiff, mental and physical, and should inquire into and determine by the evidence whether or not said injuries are permanent or temporary.

In estimating the damages to the plaintiff's business covered by the period for which this suit is brought, the jury is instructed that the plaintiff is entitled to recover a sum equal to the amount the jury believe from the evidence she would have earned net during the period of time embraced between the tenth day of February, 1894, and the eighth day of February, 1897; and in determining the value of the plaintiff's business alleged by her to have been destroyed, the jury should consider what the said business was worth to the plaintiff previous to the existence of said nuisance.

130 In estimating the damages to the plaintiff's house and premises the jury is instructed that any depreciation in the value of the premises during the period of time covered by said suit is to be measured by the reduction in the rental value of the house and premises that may have been caused by the existence of the nuisance and, in addition thereto, any actual damage that may have

been done between the tenth day of February, 1894, and the eighth day of February, 1897, by the alleged depreciation and injury done by the rats to the house, if the jury shall find from the evidence that any injury was done to said house.

The defendant's prayers are as follows :

1. The jury are instructed that there can be no recovery in this action for loss or injury sustained by the plaintiff, if any, which they may believe from the evidence resulted from the mere location and maintenance of the ambulance stable adjoining the property of the plaintiff, although the same may have been annoying to her and to the other residents of the neighborhood, inasmuch as said stable is a necessary and proper appliance of governmental authority, if in doing so the defendant exercised reasonable care to prevent injury to the plaintiff.

2. The jury are instructed that they must find a verdict for the defendant unless they believe from the evidence that the defendant conducted its ambulance stable and stored the manure therein in a negligent and careless manner, and if the jury believe that the defendant, by its servants, exercised reasonable care in the conduct of said stable and in the storage and removal of the manure, and that no bad odors were caused or generated, and that no rats
131 gathered or flies swarmed upon its premises beyond those naturally and necessarily produced by the operation of such a stable when properly kept, and that the defendant did what was reasonably necessary to prevent injury to the plaintiff, the defendant is entitled to your verdict.

3. The jury are instructed that in order to allow anything to the plaintiff for the injury to her health they must believe from the evidence that such injuries were actually and directly caused by the carelessness or negligence of the defendant in conducting its ambulance stable; and if they believe that the plaintiff wholly suffered from the causes which resulted in her present condition prior to the erection of the stable, or if they believed that such trouble resulted from any other cause, whether before or after the ambulance stable was erected, no allowance can be made in their verdict in this action therefor.

4. The jury are instructed that there can be no recovery in this suit for the depreciation in market value, if any, of the real property of the plaintiff, but if they believe that the plaintiff lost tenants or was unable to obtain tenants for the unoccupied portion of her real property, if any, as the direct and immediate effect of the careless and negligent manner in which the defendant maintained and conducted its ambulance stables, then they may allow therefor such sums as they find from the evidence was actually lost by the plaintiff thereby.

5. The jury are instructed that in this action the plaintiff can only recover compensation for such injuries to her business, her health, or for such loss sustained in rentals of the upper portion of her premises as they find from the evidence actually occurred
132 and was directly caused by the negligence of the defendant

between the 10th day of February, 1894, and the 8th day of February, 1897.

6. In determining the loss in rentals, if any, the jury are instructed they can only consider the loss of rentals of the portion of the premises available for renting purposes during the foregoing period, and that no allowance can be made for the depreciated rental value, if any, of the portion of the premises actually occupied by the plaintiff during said period.

7. The jury are instructed that there can be no recovery by the plaintiff, even if they believe from the evidence that the defendant was negligent in the manner in which it conducted its stable, unless they further believe that such negligence was of such nature as to be productive of actual physical discomfort to persons of ordinary sensibilities and of ordinary tastes and habits, and that the defendant did not exercise reasonable care in this respect, taking into consideration the location of the stables, the situation and condition of the plaintiff's property, the manner in which the defendant maintained and conducted its stable, in connection with all the other facts and circumstances of the case as developed by the testimony.

8. The jury are instructed that no allowance can be made to the plaintiff for profits she might have made by the conduct of her business after she had discontinued the same.

9. The jury are instructed that in determining the compensation, if any, to be awarded to the plaintiff because of injuries sustained by her in her business they can only allow such sum as was the reasonable value, at the time, of the property actually destroyed or so affected as to become unsalable in the usual course of business, and such further sum as the jury may find the plaintiff suffered in diminished trade during her continuance in business, and if the jury find the plaintiff was obliged to abandon her business because of the said negligent acts of the defendant, then the jury may allow to her such further sum as they may find the plaintiff suffered by the loss of her business as a going business.

133 Mr. LECKIE: Your honor refused these prayers—the eighth and ninth—if I remember, and stated that you would charge the jury specially.

The COURT: I concluded to modify the ninth prayer and thereupon to give the eighth prayer. The eighth prayer is that in which the court states to the jury that they cannot give damages for future contingent profits, which as a proposition I have no doubt is correct law; but what they may give damages for is stated in number nine as modified.

10. The jury are instructed that there can be no allowance to the plaintiff for loss of business or profits from the conduct of the same if they believe from the evidence that the plaintiff's business was solely lost and that no profits were made after the erecting of the stable, because of the illness of the plaintiff, thereby making her unfit and unable to conduct said business, or because people were unwilling to patronize her store or permit their children to do so because of the danger resulting from the passing of the conveyance.

in and out of such ambulance stable, if they further believe from the evidence that reasonable care was exercised in having such conveyances pass in and out thereof.

134 11. The jury are instructed that in determining the compensation, if any, to be awarded to the plaintiff for injuries to her house they are limited to such sum as they may find from the evidence was necessary to repair the damage done by rats during the period of time covered by the declaration, and to restore the same to the condition in which said premises were or would have been except for such rats, provided they believe that the rats doing such injury, if any, gathered upon the premises of the defendant and came upon the premises of the plaintiff because of the careless, negligent, and improper manner in which the defendant maintained and conducted its said stable.

12. If the jury believe from the evidence that the plaintiff suffered from indigestion, and that the acts of the defendant did not contribute thereto, and that said indigestion caused or produced the nervous condition, nausea, and sleeplessness mentioned in the testimony, if any, with which they may find the plaintiff has or still suffers, or if they believe that the plaintiff's condition resulted from the blow upon her head and the assault made upon her mentioned in the testimony, and was not, in whole or in part, caused by the negligent conduct of the stable of the defendant or the storage of manure therein, there can be no recovery of any compensation for such condition, even though they may believe that her condition was aggravated by excitement and resentment occasioned by the erection by the defendant of its said ambulance stable.

15. The jury are instructed that it is not incumbent on the defendant, in order to entitle it to their verdict, to show that the said ambulance stable was maintained and conducted in a proper
135 and careful manner, but the burden is upon the plaintiff to satisfy the jury by the preponderance of the evidence that the said stable was not maintained and conducted in a reasonably careful manner, taking into consideration the nature and character of the uses of such stable, and that the same caused her injury, and unless she so satisfies the jury it is their duty to render a verdict for the defendant.

16. If the jury believe that the so-called kicking horse mentioned in the testimony was not kept at the ambulance stable, but was kept at the patrol stables adjoining, they are instructed that testimony relating thereto should be disregarded and no allowance can be made for the plaintiff in this action therefor, even if they believe that the kicking of said horse disturbed or annoyed her.

The COURT: There is one word to be said in relation to that, gentlemen. There is some evidence about a kicking horse. The alleged kicking in the declaration is in the ambulance stable and is not for any injury resulting from a horse which might be kicking in some other stable, as, for instance, the police stable. This is, perhaps, not so clear an instruction as it should be, but you will understand that that is the meaning of it—in order to recover any damages.

for the kicking of a horse or horses you must find that the kicking was in the ambulance stable.

17. If the jury believe from the evidence there were no odors from the ambulance stable or from the manure kept therein, except those necessarily and usually arising from the removal thereof, and if the jury believe from the evidence that in the removal of the manure reasonable care and caution was exercised by the defendant
136 and that it was not negligent as to the time and manner of removal and was not negligent in the use of disinfectants in the removal thereof, then they are instructed that there can be no recovery by the plaintiff in this action therefor, even if the jury should believe from the evidence that such odors materially diminished the rental value of the plaintiff's property or seriously interfered with her ordinary comfort.

Gentlemen, you can take the case.

Mr. BRANDENBURG: Will your honor just say a word or two to the jury with reference to the effect of the decision of the Court of Appeals, as counsel referred to it in his closing argument, and we have no opportunity to say anything concerning it.

The COURT: The effect of that as a matter of law is simply that the plaintiff has the right to maintain her suit, a suit for negligent conduct in the management of the stable, and to recover for it, provided the jury are satisfied from the evidence that the plaintiff has succeeded in establishing the facts that she alleges in her declaration as to negligence, by a preponderance of the evidence, as I charged you in the first instance. The decision of the Court of Appeals has nothing more to do with the case than that; that the action is maintainable on the part of the plaintiff. Whether she ought to recover or not depends upon the evidence, and that is your part of the case; that is for you to determine.

(Counsel on both sides severally and separately excepted to the refusal by the court of each of their prayers which was refused, and to the granting by the court of each of the prayers of the other side which was granted.)

137 And thereupon the jury retired to consider of their verdict.

Be it further remembered that each one of the separate and several exceptions taken by counsel for the defendant to each of the separate and several rulings of the court hereinbefore set forth was so taken by counsel for the defendant then and there, before the jury retired; separately and severally, and said exceptions were and each of them was then and there separately and severally duly noted upon the minutes of the justice presiding at the trial, and counsel for the defendant then and there prayed the court and now prays the court to sign and seal this bill of exceptions, to have the same force and effect as if each of the exceptions was separately and severally set forth in a separate bill of exceptions, and at the request of said counsel for the defendant the same is accordingly signed and

made part of the record in this cause, *nunc pro tunc*, this first day of April, A. D. 1901.

E. F. BINGHAM, [SEAL.]
Chief Justice.

We hereby consent to this bill of exceptions.

A. B. DUVALL,
Att'y for Appellant,
By A. L. S.
CHAS. A. DOUGLASS,
A. E. L. LECKIE,
LEVI H. DAVID,
Att'ys for Appellee.

April 1, 1901

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Memorandum.

April 3, 1901.—Time to file transcript of record in Court of Appeals extended 30 days.

139

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, } ss :
District of Columbia,

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 138, inclusive, to be a true and correct transcript of the record, as prescribed by rule 5 of the Court of Appeals of the District of Columbia, in cause No. 40769, at law, wherein Catherine Roth is plaintiff and The District of Columbia is defendant, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe
Seal Supreme Court my name and affix the seal of said court, at
of the District of the city of Washington, this 24th day of April,
Columbia. A. D. 1901.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1090. The District of Columbia, appellant, vs. Catherine Roth. Court of Appeals, District of Columbia. Filed Apr. 24, 1901. Robert Willett, clerk.

